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CORCORAN, CALIFORNIA 93212

IN SUPPORT OF GROUNDS 1 AND 2.

12-21-07

GROUNDS 1 & 2 "ATTACHMENT" IN SUPPORT - GROUNDS 1 & 2 VIOLATION OF U.S. CONST. 6TH

AND 14TH AMENDMENTS DUE PROCESS AND EQUAL PROTECTION CLAUSES PETITIONER'S FEDERALLY
GUARANTEED RIGHT TO SELF REPRESENTATION.

STATEMENT OF FACTS: ON 16 MARCH 05 PETITIONER MADE TWO PROFFERED
FUNDAMENTALLY SEPARATE MOTIONS TIMELY. THE FIRST MOTION PER HIS 6TH U.S. CONST
FEDERALLY GUARANTEED RIGHT TO SELF REPRESENTATION, AND ALSO A MARS DEN MOTION
TO RELIEVE COUNSEL. THE COURT ACKNOWLEDGE THE TWO SEPARATE MOTIONS
DENIED THE MARS DEN MOTION, BUT FAILED TO RULE ON PETITIONERS INVOKED RIGHT
PER HIS 6TH AMENDMENT ^{RIGHT TO SELF REPRESENTATION} AND 14TH DUE PROCESS AND EQUAL PROTECTION CLAUSES,
PETITIONER STIPULATES EXCERPTS IN EXHIBIT A RATHER THAN TRIAL TRANSCRIPTS.

NOW SEE EXHIBIT A PAGE 10 R.T. EXCERPT 0348 DATED 3-16-05, STATES 'THE
DEFENDANT MAKES A MOTION TO INVOKE HIS 6TH AMENDMENT RIGHT TO
REPRESENT HIMSELF AND ALSO REQUESTS A MARS DEN MOTION. THE COURT
WILL ADDRESS THE DEFENDANT'S MOTION AFTER THE IN LIMINE MOTIONS HAVE
BEEN COMPLETED, SEE SAME R.T. EXCERPT 0348 AT 3:20 PM. STATES "COURT IS
AGAIN IN SESSION. ATTORNEY ADAIR, THE DEFENDANT AND COURT STAFF IS PRESENT.
COURT CONDUCTS A MARS DEN HEARING. THIS MOTION IS DENIED. THE COURT ORDERS
THE TRANSCRIPT OF THIS HEARING SEALED". SEE SAME R.T. EXCERPT 0348 AT 4:07
PM. STATES, "COURT IS AGAIN IN SESSION WITH DEPUTY DISTRICT ATTORNEY MARIA
HANNAH, ATTORNEY ADAIR AND DEFENDANT PRESENT. NOW SEE EXHIBIT A PAGE 11, R.T.,
EXCERPT 0349 DATED 3-16-05. AT 4:20 PM. "THE COURT INSTRUCTS COUNSEL TO
RETURN ON MARCH 23, 2005 AT 9:45 AM IN DEPARTMENT 10, THE DEFENDANT IS
IS REMANDED TO CUSTODY WITH BAIL SET AT \$500,000.00. THE DEFENDANT IS ORDERED
TO BE PRODUCED ON 3-23-05 AT 9:00 AM IN DEPARTMENT 10. 4:25 PM COURT IS
ADJOURNED. THE COURT PREJUDICIALLY, AND ERRONEOUSLY FAILED TO RULE ON PETITIONERS
INVOKED 6TH AMENDMENT MOTION FOR HIS FEDERALLY GUARANTEED 6TH AND 14TH U.S. CONST.
AMENDMENT RIGHT TO SELF REPRESENTATION. NOW SEE EXHIBIT A, PAGE 13, R.T. EXCERPT
167 LINES 26-28. MR ADAIR: YOUR HONOR, MY CLIENT WISHES TO ADDRESS THE COURT.

1 THE COURT: WELL, SIR, ON WHAT ISSUE? THE DEFENDANT: AT THIS TIME, YOUR HONOR,
2 I WOULD LIKE TO (SEE NOW EXHIBIT A" PAGE 14, R.T. EXCERPT 168, LINES 1-12) INVOKE
3 MY SIXTH AMENDMENT RIGHTS TO REPRESENT MYSELF AS COUNSEL. THE COURT:
4 ALL RIGHT, SIR, I'LL TAKE THAT UP IN A MOMENT. I WANT TO FIRST DEAL WITH
5 THE ISSUES THAT ARE ON CALENDAR FOR TODAY. I KNOW OVER THE COURSE AND
6 THE HISTORY OF THIS CASE, ISSUES LIKE THAT HAVE BEEN RAISED BEFORE, SO
7 I'LL SET ASIDE TIME AT THE END OF TODAY'S HEARING TO HEAR THOSE FROM YOU.
8 ALL RIGHT, AND THEN IF I GRANT YOUR MOTION, YOU WILL HAVE THE OPPORTUNITY
9 TO ADDRESS ANYTHING WE'VE ADDRESSED. THE DEFENDANT: EXCUSE ME, I WOULD
10 LIKE A MARS DEN-- THE COURT: ALL RIGHT. [WE'LL DO THAT, TOO].
11 STATEMENT OF FACTS - AS THE TRIAL JUDGE ACKNOWLEDGED KNOWING THE
12 HISTORY OF THE CASE AND THE FACT OF DEFENDANT'S PREVIOUS MARS DEN, THE
13 COURT THEREFORE SHOULD'VE BEEN AWARE THAT ON 11-05-04 APPROXIMATELY
14 FOUR MONTHS PRIOR PETITIONER HAD BEEN DEEMED LAWFULLY COMPETENT BY
15 THE HON. JUDGE PRECKEL SO IT WAS CLEARLY PREDJUDICIAL ERROR IN
16 FORCING UNWANTED COUNSEL UPON AN UNWILLING DEFENDANT AGAINST THE
17 STRUCTURE OF THE BILL OF RIGHTS, THE 6TH, AND 14TH U.S. FEDERALLY GUARANTEED
18 RIGHT OF THE DEFENDANT WHEN HE INTELLIGENTLY AND KNOWINGLY WANTS TO
19 CONDUCT HIS OWN DEFENSE PERSONALLY, AND HIS RIGHT TO WAIVE COUNSEL.
20 SEE NOW STATEMENT OF FACTS - EXHIBIT A, PAGE 3, R.T. EXCERPT 11, LINES 20-24,
21 27, 28. THE DEFENDANT -- AND THE CONSTITUTION OF THE UNITED STATES, OF
22 THE 6TH AMENDMENT GUARANTEES ME THE RIGHT TO HAVE EFFECTIVE COUNSEL, AND
23 BEING CHARGED WITH A FELONY AND SO SAID THAT I AM, -- EVERY LEVEL OF THESE
24 PROCEEDINGS AND TRIAL. -- COUNSEL, AS GUARANTEED BY MY RIGHTS AS THE ACCUSED
25 BY THE CONSTITUTION OF THE UNITED STATES. SEE EXHIBIT A, PAGE 4, R.T. EXCERPT 13,
26 LINES 7, 8, 10, 16-28 - MR. PLUMMER: (MARS DEN 11-05-04) THE FACT OF THE MATTER IS THAT
27 MR. BURTON -- HE THINKS I'M NOT ADEQUATELY REPRESENTING -- APPROPRIATE DEFENSE
28 FROM HIM. I THINK HE HASN'T REQUESTED A NEW ATTORNEY BEFORE. HE DID HAVE

1 P.P. AND AN A.P.D. BRIEFLY, BUT THEY CONFLICTED OFF OF HIM BECAUSE OF THEIR
2 REPRESENTATION OF SOME WITNESSES IN THIS CASE AND I WAS APPOINTED, SO THIS
3 IS HIS FIRST REQUEST FOR A NEW ATTORNEY, I THINK HE DESERVES A CHANCE
4 TO GET A NEW ATTORNEY AND TO WORK WITH SOMEBODY THAT HE HAS CONFIDENCE
5 IN AND CAN HELP HIM LITIGATE THIS CASE. IT IS A VERY, VERY IMPORTANT
6 CASE TO HIM. I MEAN, HE'S FACING A SUBSTANTIAL PERIOD OF TIME IN PRISON,
7 IF NOT THE REST OF HIS LIFE, AND HE UNDERSTANDS THAT AND HE'S UNDERSTANDABLY
8 CONCERNED ABOUT THAT AND UNDERSTANDABLY HE HAS SOME CONCERNS ABOUT
9 MY REPRESENTATION OF HIM. SO I WOULD JOINT IN HIS REQUEST THAT--
10 SEE NOW EXHIBIT "A", PAGE 5, R.T. EXCERPT 18 LINES 1-7, 23-28. THE COURT: ARE
11 YOU PREPARED TO WAIVE YOUR SPEEDY TRIAL RIGHTS? THE DEFENDANT: NO, I'M NOT
12 PREPARED TO WAIVE MY RIGHTS TO A SPEEDY TRIAL. THE COURT: WELL, THEN
13 THE COURT IS NOT PREPARED TO SIMPLY JOIN IN MR. PLUMMER'S ACQUIESCENCE
14 TO YOUR MOTION FOR NEW COUNSEL. -- THE COURT: SO THE ONLY REASON THAT I
15 WOULD GRANT YOUR REQUEST IS, FRANKLY, OUT OF AN ABUNDANCE OF CAUTION AND
16 EXCEEDING TO MR. PLUMMER'S STATEMENT THAT HE BELIEVES THE TWO OF YOU
17 SIMPLY CAN'T GET ALONG, CAN'T OR WON'T COMMUNICATE, AND, THAT THEREFORE,
18 THERE'S A BREAKDOWN OF THE ATTORNEY/CLIENT RELATIONSHIP.
19 SEE EXHIBIT "A", PAGE 6, R.T. EXCERPT LINE 28, THE COURT: SO WHAT ARE YOU
20 TELLING ME OR (SEE EXHIBIT "A", PAGE 7, R.T. EXCERPT 20, LINES 1-9, 19-21, 26-28;
21 SEE NOW EXHIBIT "A", PAGE 8, R.T. EXCERPT 21 LINES 1-15. THE COURT: -- IF
22 WHAT YOU'RE TELLING ME IS THAT YOU HAVE A DOUBT ABOUT YOUR PRESENT
23 MENTAL COMPETENCE TO PROCEED WITHIN THE MEANING OF PENAL CODE
24 SECTION 1368, ET SEQUITUR, I REJECT THAT SUGGESTION OUTRIGHT
25 BASED UPON MY INTERACTION WITH YOU HERE THIS AFTERNOON. I CANNOT GET
26 INSIDE YOUR HEAD IN A MANNER OF SPEAKING, BUT CLEARLY THE MANNER
27 WHICH YOU HAVE PRESENTED HERE THIS AFTERNOON, THE MANNER IN WHICH
28 YOU HAVE COGENTLY AND LOGICALLY SPOKEN AT LENGTH CONCERNING

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1 YOUR CASE, ALL OF THAT CAUSES THE COURT TO CONCLUDE THAT YOU'RE
2 ABSOLUTELY COMPETENT, AS A MATTER OF LAW, AT THIS TIME SUCH THAT
3 THESE CRIMINAL PROCEEDINGS WILL GO FORTH WITHOUT UNDUE
4 INTERRUPTION FOR PURPOSES OF A 1368 EXAMINATION EVALUATION
5 AND HEARING. I FIND NOT EVEN A SCINTILLA OF EVIDENCE AS TO SUPPORT
6 OR WARRANT THE SUSPENSION OF CRIMINAL PROCEEDINGS IN THIS CASE.
7 SEE NOW EXHIBIT "A" PAGE 97, R.T. EXCERPT 17, LINE 1-13 (11-05-04 HON JUDGE PRECKEL)
8 THE COURT: MR. BURTON, IF I GRANT YOUR REQUEST— AND LET ME SAY PARENTHETI-
9 CALLY YOU'RE, IN MY VIEW, VERY WELL-SPOKEN. YOU'VE OBVIOUSLY DONE SOME
10 READING, AND PLEASE DON'T TAKE WHAT I'M ABOUT TO SAY AS A CRITICISM
11 OF YOU, BUT IT'S OFTEN SAID THAT A LITTLE KNOWLEDGE CAN BE A
12 DANGEROUS THING. AND YOU'VE BEEN THROWING AROUND THE MAJORITY
13 OF THE AMENDMENTS IN THE [BILL OF RIGHTS] AND A FEW OTHERS TO
14 BOOT, SEE LINES 17-19. THE COURT— IT'S THE ATTORNEY'S JOB TO
15 REPRESENT YOU AND TO ADVOCATE YOUR POSITION AND PROTECT YOUR RIGHTS
16 AND INTERESTS. COUNSEL ON DIRECT APPEAL OMITTED THE FACT
17 CLEARLY AS ILLUSTRATED BY THE STIPULATED EXHIBIT "A" PAGE 10, R.T. EXCERPT
18 0348 THAT PETITIONER INVOKED HIS FIRST MOTION PER HIS U.S. FEDERALLY
19 GUARANTEED RIGHT PER HIS 6TH U.S. CONST. AMENDMENT ON 16 MARCH 05, TIMELY,
20 THAT WAS NOT RULED ON, AND ALSO COUNSEL MISSTATED THE FACTS
21 AND MULTIPLIED THE PROCEEDING WITH FALSE STATEMENTS ALLEGING,
22 PETITIONER WAS IN ERROR BY STATING THE TRUE FACT THE THE HON.
23 JUDGE PRECKEL HAD FOUND DEFENDANT TO BE IN FACT LAWFULLY COMPETENT
24 ON 11-05-04, AND THAT TRIAL COUNSEL ADAM, AND TRIAL JUDGE WERE
25 OVERREACHING AND PREJUDICIALLY AND ERRONEOUSLY PLACED PETITIONER ON
26 A 1368 HOLD UNCONSTITUTIONALLY AND THE COURT ORDERED PETITIONER
27 TO UNDERGO A COMPETENCY EXAM, WITHOUT GIVING HIM HIS FIFTH AMENDMENT
28 WARNINGS UNDER ESTELLE, THAT HE HAD A RIGHT TO REFUSE. PER DEFENSE COUNSEL

1 ADAMS URGING IN FAILING TO PROTECT HIS CLIENTS CONSTITUTIONAL
2 RIGHTS. SEE EXHIBIT "A", PAGE 59, R.T. EXCERPT 218/250. LINES 1-4
3 THE COURT: MR. ADAIR DO I NEED TO ADVISE HIM OF HIS CONSTITUTIONAL
4 STATUTORY RIGHTS ON THE RECORD? MR. ADAIR: NO, YOUR HONOR.
5 THE COURT: ALL RIGHT. PETITIONER OBJECTED TO COUNSELS 1368
6 MOTION, WAS DENIED HIS MARSDEN, AND FARETTA PRO SE MOTION, AND
7 DENIED HIS 14TH AMENDMENT DUE PROCESS AND EQUAL PROTECTION
8 COUNSEL IN DIRECT CONFLICT OF INTEREST AND ALSO TRIAL
9 JUDGE HALGREN, AS SHE WAS A DEPORTED MATERIAL WITNESS TO
10 FACT, SIGNED OFF ON THE TRO SERVED ON MR THOMAS ALLEGED VICTIM
11 BY HER BALIFF APPROX 23 FEB 04, FAILED TO ENFORCE HER OWN
12 LAWFULLY SERVED TRO, AS IT WAS VIOLATED 19 MARCH 04, AS
13 PETITIONERS DAUGHTER WAS STATUTORILY KIDNAPPED BY MR
14 THOMAS UNDER LAWS GOVERNING RESTRAINING ORDERS UNDER
15 CALIFORNIA PENAL CODE, CAUSING THE MOVEMENT OF A MINOR WITHIN
16 THE COUNTY OF SAN DIEGO, CA. JURISDICTION. PETITIONERS MINOR CHILD
17 PREONA BURTON WAS AN EQUAL PROTECTION ON SAME TRO. TRIAL JUDGE HALGREN
18 FAILED TO PROTECT PETITIONER MINOR CHILD AND PETITIONER WAS DENIED
19 HIS RIGHT TO A FAIR AND IMPARTIAL TRIAL DUE TO DEPORTATION OF
20 THE TRIAL JUDGE A MATERIAL WITNESS ON GENUINE COURT BUSINESS
21 RECORDS. TRIAL COUNSEL IN ACTIVE CONFLICT OF INTEREST, FAILED
22 TO COMPEL DISCOVERY AND KNEW TRIAL JUDGE TO BE MATERIAL
23 WITNESS TO FACT. SEE NOW EXHIBIT "A", PAGE 55 R.T. EXCERPT 214, LINES
24 22-26 THE COURT: ALL RIGHT. THANK YOU. LETS SEE MR. BURTON, YOU
25 HAD RAISED AN OBJECTION. ARE YOU OBJECTING TO YOUR COUNSEL'S
26 MOTION? THE DEFENDANT? I WOULD LIKE AN ATTORNEY TO REPRESENT
27 ME FOR THIS MARSDEN. I HAVE A CONFLICT OF INTEREST. SEE NOW
28 EXHIBIT "A" PAGE 80 R.T. EXCERPT 797 LINES 1-11, 19-21 - THE COURT: ALL

1 RIGHT. SO YOU HAVE YOUR FRAMEWORK AS TO WHAT YOU CAN DO.
2 MR. ADAIR: YES, YOUR HONOR. THE COURT: I THINK -- MR. ADAIR: [IT'S
3 FUN BEING A PROSECUTOR.] [THE COURT: IT DOES PUT YOU IN A
4 DIFFERENT ROLE, DOESN'T IT?] ALL RIGHT, LETS TALK ABOUT EXHIBITS.
5 WE DON'T REALLY IN MY VIEW NEED TO DO THIS ON THE RECORD
6 BECAUSE WE WILL DO A MORE FULL INSTRUCTION REVIEW ON
7 THE RECORD AT THE END OF THE CASE, SO IF YOU'D LIKE WE --
8 MR ADAIR, DID YOU GET A PACKET OF THE INSTRUCTIONS? MR. ADAIR: I
9 DID, YOUR HONOR. SEE NOW EXHIBIT "A" PAGE III RT. EXCERPT 14, LINES.
10 14-18, 21-26 THE COURT: MR. BURTON (11-05-04 HON JUDGE PRECKEL) IS THERE
11 ANYTHING FURTHER YOU WISH TO SAY? THE DEFENDANT: YES SIR, YOUR HONOR,
12 -- THAT THERE ALSO WAS INFRINGEMENT UPON MY 14TH AMENDMENT
13 RIGHTS TO DUE PROCESS, AND ALSO MY DAUGHTER WHO -- ORDERS, AND SHE
14 DID NOT RECEIVE EQUAL PROTECTION UNDER THE LAW, AND I FEEL I DIDN'T
15 EITHER BECAUSE WHEN IT CAME UP CONCERNING THE RESTRAINING
16 ORDER -- ONCE RESTRAINING ORDERS -- FROM THE INFORMATION I GATHERED,
17 WHETHER THEY HAVE BEEN SERVED OR NOT, THEY'RE SUPPOSED TO BE MAINTAINED
18 BY LAW ENFORCEMENT OFFICERS. SEE EXHIBIT "A" PAGE, 112, RT. EXCERPT 815, PAGE
19 DATED (7-25-05) 113, RTECERPT 816 BOTH LINES 1-28 --
20 SEE EXHIBIT "A" PAGE 115 RT EXCERPT 818, LINES 10-16, 20-26. THE DEFENDANT:
21 -- AND THE POLICE ALSO DENIED ME MY ~~DUE~~ PROCESS AS FAR AS EQUAL
22 PROTECTION UNDER THE LAW. THE COURT: OKAY, LET ME STOP YOU RIGHT THERE.
23 I UNDER STAND THAT MOTION, ARE THERE ANY GROUNDS ON WHAT YOU'RE SEEKING
24 TO CHALLENGE MR. ADAIR? THE DEFENDANT: CONFLICT OF INTEREST BECAUSE --
25 YOU WERE THE PRESIDING JUDGE AT THE TIME. THOMAS SHOWED UP
26 AND HE WAS SERVED BY YOUR BALIFF IN YOUR COURT ROOM AT THE EX PARTE
27 HEARING. I'VE BEEN FALSELY ARRESTED, PROLONGED DETAIN MENT, AND
28 FALSE IMPRISONED, MY WHOLE DUE PROCESS, MY CIVIL RIGHTS HAVE BEEN VIOLATED.

1 SEE NOW EXHIBIT "A" PAGE 117, R.T. EXCERPT 822 LINES 25 - 28. THE COURT;
2 SO THE ONLY ISSUE I BELIEVE THAT I MAY NEED SOME INPUT ON TO PERHAPS
3 BETTER UNDERSTAND THE CONCERN IS AN ISSUE RAISED THAT SOMEHOW
4 THIS COURT IS A WITNESS OR HAS KNOWLEDGE ABOUT THE TRO
5 PROCEEDINGS. SEE EXHIBIT "A" PAGE 118, R.T. EXCERPT 823 LINES 3-10, 20-
6 28. PETITIONER DENIES OMITTED PORTIONS - THE COURT: -- MR ADAIR, DO YOU HAVE
7 ANY ADDITIONAL INFORMATION OR BACKGROUND ON THAT ISSUE?
8 MR ADAIR: I BELIEVE YOU DID SIGN SOME OTHER DOCUMENTS IN THE
9 CASE, THE COURT: -- THE TRO BETWEEN MR. BURTON AND MR. THOMAS,
10 -- MR ADAIR: -- IT LOOKS LIKE YOU SIGNED THE NOTICE. THE COURT:
11 OSC HEARING? MR ADAIR: THAT'S CORRECT THE COURT: OKAY, ALL RIGHT.
12 SEE ANY REASON WHY ANY INVOLVEMENT I HAD IN A FAMILY LAW -- DUE TO
13 THIS COURT'S INVOLVEMENT IN THAT CASE, MR. ADAIR: THE OTHER
14 THING ABOUT IT IS THAT IT APPEARS THAT ANYTHING THAT YOU -- IF YOU
15 WERE TO HAVE BEEN A WITNESS, IT'S RELEVANT ISSUES IN THIS
16 MATTER THAT THE DOCUMENTS THEMSELVES COULD BE USED
17 RATHER THAN YOUR SELF -- CONFLICT, THE COURT: ALL RIGHT,
18 SEE EXHIBIT "A" PAGE 119, R.T. EXCERPT 824, LINES 1-6, 10, 11, AND 18. MR. ADAIR:
19 MR. BURTON WOULD LIKE TO ADDRESS THE COURT AGAIN, THE COURT,
20 ALL RIGHT, MR. BURTON, YOU MAY ADDRESS ME IN PARTICULAR WITH REGARD
21 TO THE ISSUE THAT MR. ADAIR JUST ADDRESSED ON THE RESTRAINING
22 ORDER OR THE CUSTODY MATTER, THE COURT: ALL RIGHT. GO AHEAD,
23 THE DEFENDANT: YES, MAAM, -- YOU MAY REFER YOU TO THE COURT
24 CLERK'S RECORDS. SEE NOW EXHIBIT "A", PAGE 66, R.T. EXCERPT 255 (MARSDEN HEARING
25 CLINICS) THE COURT: (REFERRING TO MR. ADAIR) LINES 2-7 -- NOW YOU STATE THAT
26 HE IS STATE INTERPOSED BECAUSE HE IS COURT APPOINTED, WHAT DOES ALL THAT
27 MEAN? THE DEFENDANT: IT MEANS THAT WHEN I AM ALLOWED TO MAKE MY POINT HERE
28 ON WHAT HE DID, IF YOU WOULD BE A LITTLE MORE -- THE COURT: ALL RIGHT. MAKE YOUR POINT.

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1 SEE EXHIBIT "A", PAGE 66, R.T. EXCERPT 255 LINES 22-29, EXHIBIT "A" PAGE 67, R.T. EXCERPT
2 256, LINES 1-5, 10-16. THE DEFENDANT: HE MANIPULATED ME TO DO A PEREMPTORY
3 CHALLENGE BEFORE JUDGE EXARHOS AND WHEN I -- THE COURT: I'M JUDGE EXARHOS,
4 HAVE I BEEN PEREMPTORY CHALLENGED? HAVE I BEEN CHALLENGED IN THIS
5 MATTER, MR. ADAIR? MR. ADAIR: NO, YOUR HONOR. THE DEFENDANT: WHAT I AM
6 SAYING SIR -- EXCUSE ME, IS THAT HE CAME BEFORE YOU, I'M SORRY, SIR, HE
7 CAME TO YOU, HE MANIPULATED ME TO GET A PEREMPTORY CHALLENGE, THE
8 COURT: WAS A PEREMPTORY CHALLENGE FILED IN THIS CASE? MR. ADAIR: IT
9 WAS, YOUR HONOR. THE COURT: AGAINST WHO? MR. ADAIR: AGAINST JUDGE --
10 THE COURT: HANOIAN? MR. ADAIR: HANOIAN, YES, YOUR HONOR. STATEMENT OF
11 CASE AND FACT: -- THE HON JUDGE HANOIAN WAS THE MAGISTRATE THAT HELD
12 PETITIONER TO ANSWER AT HIS PRELIMINARY HEARING. PETITIONER DOESN'T
13 BELIEVE HE COULD LAWFULLY BE CHALLENGED ONCE PETITIONER HAD ALREADY
14 PREVIOUSLY BEEN IN HIS COURT. SEE EXHIBIT "A", PAGE 65, R.T. EXCERPT 254, LINES,
15 15, 16, 18, 19-27. THE COURT: MR. ADAIR, YOU ARE SAYING IS WORKING FOR THE
16 PROSECUTION? THE COURT: IS THAT WHAT YOU ARE SAYING? THE DEFENDANT: YES
17 SIR. -- I AM SAYING HE'S STATE INTERPOSED. THE COURT: HE'S WHAT?
18 [MR. ADAIR:] "HE'S STATE INTERPOSED." THE COURT: STATE INTERPOSED?
19 THE DEFENDANT: HE'S COURT APPOINTED. SEE NOW EXHIBIT "A", PAGE 68, R.T. EXCERPT 257,
20 LINES 8-11, 20-28. THE DEFENDANT: ON THE RECORD, (REFERRING TO 16 MARCHOS) BEFORE
21 I CALLED MY MARSDEN, I STATED MY INTENTION TO GO PRO PER AT THAT TIME PER MY
22 SIXTH AMENDMENT RIGHTS. AND I BELIEVE THE COURT ERRORED IN DENYING ME MY
23 RIGHT TO GO PRO PER. -- JUDGE PRECKEL STATED (ON 11-05-04) THAT HE FOUND ME
24 COMPETENT. FROM MY UNDERSTANDING, IF THE DEFENDANT IS COMPETENT AND HE
25 HAS MADE A TIMELY MOTION TO GO PRO PER, HE HAS THAT RIGHT TO DO SO. I MADE
26 A TIMELY MOTION ^{PREVIOUS} FELT THE COURT AND MR ADAIR WERE OVERREACHING AND
27 PLACED ME UNDER A 1368 HOLD AND ORDERED ME TO UNDERGO A COMPETENCY
28 HEARING. SEE EXHIBIT "A" PAGE 69, R.T. EXCERPT 258, LINES 6-16. THE DEFENDANT: I FELT

1 THAT THE COURT ERRORED AND VIOLATED MY SIXTH AMENDMENT RIGHTS, THE
2 JUDGE ALSO VIOLATED MY 14TH RIGHTS TO DUE PROCESS. -- I'D LIKE TO MOTION
3 THE COURT TO RELEASE ME FROM CUSTODY, I HAVE BEEN UNLAWFULLY DETAINED.
4 THE COURT: NOW MR. BURTON, -- WE'RE NOT HERE ON UNLAWFUL DETENTION
5 OR PRO PER RIGHTS. SEE EXHIBIT "A", PAGE 76, R.T. EXCERPT 266, LINES 3-7, 16, 17, 21,
6 22, 25, 28, SEE ALSO, EXHIBIT "A" R.T. EXCERPT 267, PAGE 77, LINES 1-7, 9-28. THE COURT:
7 ANYTHING FURTHER, MR. BURTON? THE DEFENDANT: THE PROBLEM IS, SIR, THAT
8 I WAS UNLAWFULLY ARRESTED AND DETAINED. THE COURT: [I DON'T WANT
9 TO GO INTO THE FACTS OF THE CASE]. -- THERE IS NO BASIS TO
10 DISCHARGE MR. ADAIR AT THIS TIME. -- YOUR MOTION TO DISCHARGE
11 HIM AS YOUR ATTORNEY OF RECORD IS DENIED. -- NOW, WE WILL BE
12 OPEN AGAIN TO THE DISTRICT ATTORNEY, -- WE ARE AGAIN IN SESSION,
13 PRESENT IS THE DISTRICT ATTORNEY, [MR. TROCHA]. THE PURPOSE OF
14 THE HEARING NOW IS TO SET A TRIAL DATE AFTER CRIMINAL PROCEEDINGS
15 HAVE BEEN REINSTITUTED. THE TRIAL WILL BE ON, JULY 11TH. IS THAT DATE
16 GOOD FOR YOU, MR. ADAIR? MR. ADAIR: THAT'S NOT THE BEST. COULD I SUGGEST
17 THE 19TH, WOULD THAT BE AVAILABLE? IF I COULD ADD ONE FACTOR, YOUR HONOR.
18 -- WHETHER OR NOT YOU WANT TO ASSIGN IT BACK TO HER. MR. ADAIR: HE'D
19 PREFER NOT TO WAIVE TIME. THE COURT: ALL RIGHT. YOU STILL WANT IT ON THE
20 19TH MR. ADAIR? MR. ADAIR: YES, SIR. THE COURT: WITH THREE DAYS REMAINING?
21 MR. ADAIR: YES SIR. THE COURT: TUESDAY, JULY 19TH 9 O'CLOCK A.M. IN THIS
22 DEPARTMENT, SEE ALSO EXHIBIT A PAGE 63 R.T. 252, LINES 7-10, 11, 16-19, 26-28, EXHIBIT
23 A. PAGE 64, R.T. EXCERPT 253, LINES 1-7. THE DEFENDANT: -- ALSO I HAVE SOME MOTIONS
24 AND SOME PAPERS HERE. THE COURT: WE'RE NOT GOING TO GO INTO THE MOTION HERE, MR.
25 BURTON. NOW SEE EXHIBIT "A" PAGE 61, R.T. EXCERPT 2121, FARETTA PRO SE, MOTION AS INDICATED
26 BY ARROW AND THE WORD "HERE". PETITIONER FILED A TIMELY FARETTA PRO SE MOTION ON 5-27-05, THAT
27 THE COURT FAILED TO RULE ON, DIDN'T MAKE THE PROPER WINSTON INQUIRY, AND THUS VIOLATED PETITIONERS
28 6TH AND 14TH U.S. CONST. FEDERALLY GUARANTEED RIGHT TO SELF REPRESENTATION, AND HIS RIGHT TO WAIVE APPOINTED COUNSEL.

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1 SEE EXHIBIT A, PAGE 62 R.T. EXCERPT 251, LINES 7-20. THE COURT: THE DEFENDANT IS
2 BEFORE THE COURT FOR CRIMINAL PROCEEDINGS, HAVING BEEN REINSTATED, AND IT'S A
3 MATTER OF SETTING THE MATTER FOR TRIAL AND READINESS, CORRECT? MR. ADAIR:
4 THAT'S CORRECT, YOUR HONOR. MR. BURTON ALSO WANTED TO BRING A MARS DEN MOTION-
5 THE COURT: ARE YOU APPOINTED, MR. ADAIR? MR. ADAIR: YES, I WAS, YOUR HONOR.
6 THE COURT: OKAY, ALL RIGHT, I'VE GOT THIS HANDWRITTEN MOTION HERE. -- WE
7 WILL DEAL WITH THE MARS DEN MOTION, AT THIS TIME. SO WE WILL CLEAR THE
8 COURTROOM AND PROCEED WITH THAT HEARING. STATEMENT OF RELEVANT
9 FACTUAL BACKGROUND. THE DISTRICT ATTORNEY MR. TROCHA WAS PRESENT AGAIN ON
10 RECORD OF EXCERPT. THE COURT FAILED TO RULE ON PETITIONER'S TIMELY FARETTA
11 PRO SE MOTION, WITHOUT MAKING THE PROPER WINDHAM INQUIRY, AS THE COURT
12 STATED IN THE EXCERPT, EXHIBIT A, PAGE 70, R.T. EXCERPT 266 LINES 6 AND 7. THE COURT: I
13 DON'T WANT TO GO INTO THE FACTS OF THE CASE, SEE ALSO EXHIBIT A, PAGE 70, R.T. EXCERPT
14 266, LINES 9, 21, 22-28. THE COURT: YOUR MOTION TO DISCHARGE HIM AS YOUR ATTORNEY OF
15 RECORD IS DENIED, -- NOW, WE WILL BE OPEN AGAIN TO THE DISTRICT ATTORNEY,
16 -- WE ARE AGAIN IN SESSION, PRESENT IS THE DISTRICT ATTORNEY, MR. TROCHA.
17 SEE NOW EXHIBIT A, PAGE 108, R.T. 0139, LINES 1-28. THE COURT ABUSED IT'S DISCRETION
18 IN DENYING PETITIONER HIS RIGHT TO SELF REPRESENTATION AS THE EXCERPTS SHOW, HE
19 MADE HIS FIRST MOTION PER HIS U.S. FEDERALLY GUARANTEED RIGHT TO SELF REPRESENTATION
20 ON 16 MARCH 05, AFTER HE HAD BEEN DEEMED LAWFULLY COMPETENT BY THE HON. JUDGE
21 PRECKEL ON 11-05-04, PETITIONER'S MOTION WAS KNOWINGLY, AND INTELLIGENTLY
22 MADE. PETITIONER WAS COGNIZANT OF THE DANGERS OF SELF REPRESENTATION,
23 AS WELL AS HIS RIGHT TO WAIVE COUNSEL AS ILLUSTRATED ON 11-05-04.
24 PETITIONER SHOULD'VE BEEN ALLOWED TO REPRESENT HIMSELF. PETITIONER CONTENTS
25 HIS ATTORNEY ON DIRECT APPEAL RENDERED INEFFECTIVE ASSISTANCE IN FAILING TO
26 INFORM THE APPEALS COURT THAT HIS [FIRST] FACTUAL MOTION FOR SELF REPRESENTATION
27 WAS ON 16 MARCH 05 PER HIS INVOKED U.S. CONST. 6TH AMENDMENT RIGHT, HIS 2ND ON 3-29-05
28 ^{THIRD MOTION} ~~SECOND~~ MOTION A FILED FARETTA PRO SE FILED MOTION 5-27-05 AFTER HIS ALLEGED ^{SEVERAL}

NR. F.W. BATES #102570
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1 COMPETENCE HAD BEEN DEEMED RESTORED BY HON JUDGE KRAUL ON 5-23-05,
2 PROSECUTOR WAS PRESENT AT MARSDEN AS EVIDENCED BY THE PREVIOUS
3 EXCERPT STATEMENTS, THE HON. JUDGE EXAMOLS, REFUSED TO GO INTO THE
4 FACTS OF THE CASE, THEREFORE FAILING TO MAKE THE ADEQUATE
5 WINDHAM INQUIRY, AND THUS FAILED TO RULE ON PETITIONER'S TIMELY PROFFERED
6 FARETTA PRO SE MOTION, FORCING COUNSEL UPON AN UNWILLING DEFENDANT
7 VIOLATING HIS RIGHT TO CONFLICT FREE COUNSEL, AND SUBSEQUENTLY
8 VIOLATED PETITIONER'S 6TH AND 14TH U.S. CONST. DUE PROCESS AND EQUAL PROTECTION
9 CLAUSES AS FEDERALLY GUARANTEED. THE COURT'S FAILURE TO RULE ON THE
10 ACKNOWLEDGE "FARETTA PRO SE" TIMELY FILED MOTION WAS PREJUDICIAL
11 AND ERRONEOUS, AND SHOULD WARRANT A PER SE REVERSAL WITHOUT
12 AND ASSESSMENT OF PREJUDICE, BECAUSE THE FAILURE TO RULE
13 ONCE THE PROSECUTOR MR. TROCHIA HAD REENTERED THE COURT ON RECORD.
14 THE ERRONEOUS DENIAL OF DEFENDANT'S RIGHT TO SELF REPRESENTATION
15 WITHOUT MAKING AN INQUIRY INTO THE FACTS WAS INHERENTLY PREJUDICIAL.
16 PETITIONER'S SECOND MOTION A FARETTA PRO SE MOTION WAS MADE 24 MARCH 05, AND
17 HIS FOURTH FARETTA PRO SE MOTION THAT WAS NEVER RULED ON BY THE HON. JUDGE
18 HAL GREEN WAS TIMELY FILED ON JULY 07, 05 OR ON OR ABOUT JULY 08, 05 - ON COURT
19 CLERK RECORDS. THAT TRIAL COURT FAILED TO RULE ON, SEE NOW EXHIBIT "A",
20 PAGE 108, R.T. EXCERPT 0139, LINES 1-28. SEE ALSO EXHIBIT "A" PAGE 81, R.T. EXCERPT 0358,
21 DATED 7-19-05, FIRST DAY OF TRIAL PRIOR TO JURY SELECTION THAT WAS NOT COMPLETE AS
22 JURORS WERE SWORN ON 7-20-05. SEE AT 10:00, STATES "COURT IS AGAIN IN SESSION
23 WITH ALL PARTIES PRESENT AS NOTED PREVIOUSLY. [ATTORNEY ADAIR REQUEST THAT
24 THE MOTIONS DEFENDANT PREVIOUSLY FILED, WITHOUT THE KNOWLEDGE OF ATTORNEY
25 ADAIR BE ACCEPTED.] "THE MOTION IS DENIED." NOW SEE EXHIBIT "A", PAGE 93, R.T. EXCERPT 0477
26 EXCERPT 477 (DATED 6-21-05) LINES 1-16, EL CAJON, CALIFORNIA ^{ENCLOSURE}
27 EXHIBIT "A" PAGE 110 R.T. EXCERPT 313, LINES 1-24, THE COURT: ALL RIGHT, GREAT. IN THE
28 MEANTIME, WE'LL ADDRESS OTHER ISSUES, THE NEXT POINT IS, YOU RAISED THE FACT THAT

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MR BURTON HAD FILED SOME DOCUMENTS WITH THE COURT; THEY WERE WITH MY
AUTHORIZATION, RETURNED BECAUSE HE IS REPRESENTED BY COUNSEL, AND SO,
MR, BURTON, YOU NEED TO UNDERSTAND THAT THE WAY MOTIONS ARE BROUGHT TO THE
COURT IS IF YOUR ATTORNEY FEELS THERE IS A LEGAL BASIS FOR BRINGING A
MOTION, HE WILL PRESENT THAT. WE DON'T OPERATE WITH ESSENTIALLY DOUBLE
TEAMING. WE DON'T HAVE BOTH THE DEFENDANT AND THE ATTORNEY SEPARATELY
BRINGING MOTIONS, BUT INSTEAD THROUGH YOUR COUNSEL MOTIONS ARE BROUGHT.
SO THE MOTIONS THAT MR. ADAIR, THROUGH HIS LEGAL EXPERIENCE AND
TRAINING, HE DEEMS APPROPRIATE TO RAISE, I WILL CONSIDER, BUT I
WILL NOT CONSIDER SEPARATE MOTIONS FILED BY YOU. JUST SO YOU UNDERSTAND
OUR PROCEDURE (REFERRING TO DEFENDANT) WITH REGARD TO THE ARRAIGNMENT,
I BELIEVE THE SECOND AMENDED INFORMATION, WHICH WAS FILED ON JUNE
16TH AT THE LAST HEARING, MR. ADAIR WAS PRESENT AT BOTH, AND HAD NOTICE
OF THAT, BUT MR. BURTON WAS NOT, SO I BELIEVE HE NEEDS TO BE
ARRAIGNED ON THE SECOND AMENDED INFORMATION. - CLEARLY THE TRIAL
JUDGE ABUSED HER DISCRETION, AS PETITIONER HAS A FEDERALLY GUARANTEED
U.S. CONST RIGHT TO PROCEED WITH OR WITHOUT COUNSEL PROSE, IF HE
KNOWINGLY AND INTELLIGENTLY SEEKS TO DO SO, ALSO PETITIONERS FEDERALLY
GUARANTEED RIGHT TO BE PRESENT AND RIGHT TO NOTICE WAS VIOLATED
BY THE TRIAL COURT AS PETITIONERS COMPETENCE HAD BEEN REINSTATED,
THE TRIAL COURT PREDJUDICALLY ERRED IN FAILING TO INQUIRE INTO, AND
RULE ON PETITIONERS TIMELY FILED FARETTA PRO SE MOTION, AND FORCING
CONFLICTING COUNSEL ON AN UNWILLING DEFENDANT WAS UNCONSTITUTIONAL,
~~SEE EXHIBIT "A" PAGE 112, R. 1. EXCEPT~~ ^{ENFORCED}. FURTHERMORE ARRAIGNING PETITIONER
ON THE DAY OF TRIAL WAS DONE TO GAIN AN UNFAIR TACTICAL ADVANTAGE OVER
DEFENDANT, THE CHANGING OF THE CHARGING INFORMATION, AND THE ACCUSATIONAL
DELAY, VIOLATED PETITIONERS RIGHT TO A SPEEDY TRIAL, AS WELL AS DUE PROCESS
AND EQUAL PROTECTION WITHIN THE MEANING OF THE 6TH AND 14TH U.S. FEDERALLY GUARANTEED AMENDMENTS

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1 SEEN NOW. EXHIBIT "A" PAGE 112, RT. EXCERPT 815, LINES 1-28, ALSO EXHIBIT "A" PAGE 113
2 RT. EXCERPT 816, LINES 1-28, EXHIBIT "A" PAGE 114, RT. EXCERPT 817, LINES 1, 2, 5-18, 40,
3 21, 25-28, EXHIBIT "A" PAGE 115, RT. 818, LINES 1, 10, ²⁰⁻²⁷ 27, EXHIBIT "A" PAGE 116, RT.
4 EXCERPT 821, LINES 1-5, 22-26, 27, 28, EXHIBIT "A" PAGE 117, RT. EXCERPT 822, LINES 3-
5 10, 18-28, EXHIBIT "A" PAGE 118, RT. EXCERPT 823, LINES 3-10, 12-16, 20-25 (PETITIONER
6 DENIES ALL OMITTED PORTIONS OF EXCERPTS.) DATED: 7-25-05, EL CAJON, CALIFORNIA,
7 MONDAY, 7-25-05, 9:18 A.M. (THE FOLLOWING PROCEEDINGS HAVE BEEN ORDERED
8 SEALED BY THE COURT;) THE COURT: MR. BURTON, WHAT IS -- FIRST OF ALL, I
9 WOULD LIKE YOU TO TELL ME WHAT CONCERNS YOU HAVE ABOUT YOUR ATTORNEY
10 THE DEFENDANT: MAY I URGE THE COURT TO HAVE MY ATTORNEY SWORN? THE COURT
11 WHY? THE DEFENDANT: BECAUSE HE NEEDS TO TESTIFY. THE COURT: YOU NEED TO TELL
12 THE DEFENDANT: THE JUDGE MAY WANT TO ASK HIM -- THE COURT: I'LL DECIDE
13 IF I NEED TO DO THAT. -- WHAT ARE THE REASONS? THE DEFENDANT:
14 FOR ONE THING, YOUR HONOR, I HAVE JUDICIAL PREJUDICE. I HAVE JUDICIAL
15 CONFLICT OF INTEREST AS YOUR HONOR WAS THE ONE WHO WAS MY BEST
16 WITNESS IN THIS MATTER. AND I FEEL I'VE BEEN DENIED OF MY RIGHT
17 TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO
18 SIGNED OFF ON THE TRO. -- WHO MADE ME AWARE THAT THOMAS HAD
19 STRUCK ANGELA SANDERS IN THE HEAD WITH THE GLASS, AND YOU ARE
20 THE ONE THAT KNOWS ANGELA SANDERS PERJURED HERSELF, BECAUSE IN
21 YOUR COURT AT THE EX PARTE HEARING WHERE YOU (P) RESIDED AT, I HAD
22 MY PAPERWORK FILLED OUT AS A PETITIONER, BUT YOU HAD MADE US SWITCH
23 SEATS. YOU SAID THAT THE ACTION BEGAN IN THE FAMILY COURT, INITIATED
24 THROUGH CHILD SUPPORT DIVISION BY MS. SANDERS, AND YOU MADE ME THE RESPONDENT,
25 AND, THEREFORE, YOU HAD KNOWLEDGE OF EVERYTHING, MY FEARS OF THOMAS WAS
26 PRESENT. IF I CAN REFER YOU TO YOUR OWN TRANSCRIPT, YOU'LL SEE THAT HE
27 WAS STALKING ME THEN (APPROXIMATELY 2-23-04) THE COURT: AGAIN, LET
28 ME STOP YOU RIGHT THERE. SO IN WHAT WAY IS THAT A REASON FOR DISCHARGING

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1 MR. ADAIR? THE DEFENDANT: I WANT A MOTION FOR A MISTRIAL, I HAVE A
2 CONFLICT OF INTEREST WITH COUNSEL BECAUSE I MADE HIM AWARE OF
3 THIS, AND I WANTED -- TO HAVE HIM SWORN. HE'S AWARE OF THIS CONFLICT.
4 THE COURT: OKAY, ARE THERE ANY OTHER GROUNDS. THE DEFENDANT: YES,
5 THE COURT: WHAT OTHER GROUNDS? WHEN I MADE MY MOTION TO GO PRO PER,
6 I FELT YOU WERE PREJUDICE IN DENYING THAT AND ALL MY OTHER
7 MOTIONS BECAUSE -- THAT DENIED ME -- IT DEPRIVED ME OF MY 14TH
8 AMENDMENT RIGHT FOR DUE PROCESS, AND I'D LIKE A DISMISSAL BASED
9 ON A VIOLATION OF MY 6TH AMENDMENT RIGHT AND MY 14TH AMENDMENT RIGHT,
10 BECAUSE YOU DENIED ME MY RIGHT TO GO PRO PER AND YOU KNEW THAT I
11 WAS COMPETENT. THE COURT: AND WHAT IS THE -- HOW DOES THAT
12 RELATE TO YOUR -- THE DEFENDANT: COUNSEL WAS AWARE OF THIS
13 AND HE DID NOT INFORM THE COURT, THIS IS NEGLIGENCE IN MY
14 PROSECUTION -- HE DID NOT INFORM THE COURT OF THIS MATTER, AND
15 THAT IS THE INEFFECTIVE ASSISTANCE OF COUNSEL IN VIOLATION OF MY
16 6TH AND 14TH AMENDMENT RIGHTS TO DUE PROCESS, I'D LIKE A DISMISSAL
17 ON THAT, COUNSEL IS AWARE THAT PROSECUTION HAS NOT PROVIDED
18 ME WITH ALL DISCOVERY AS MR. PLUMMER HAD MOTIONED MS. MARIA
19 HANNAH WITH MOTIONS ON E-BRADY FOR ALL DISCOVERY, PROSECUTION
20 DID NOT RESPOND WITHIN A TIMELY MANNER, THEREFORE, DENIED ME
21 MY DUE PROCESS, BECAUSE I HAD THE RIGHT TO BE ABLE TO KNOW
22 THE EVIDENCE AGAINST ME -- I WOULD OBJECT TO ANYTHING
23 PROSECUTION WOULD SAY AS FAR AS THEIR -- THE COURT: OKAY.
24 LET ME STOP YOU THERE, SO DISCOVERY ISSUE IS ANOTHER REASON?
25 THE DEFENDANT: DISCOVERY ISSUES AND -- THE COURT: ARE THERE
26 ANY OTHER GROUNDS IN WHICH -- THE DEFENDANT -- AND THE POLICE
27 ALSO DENIED ME MY DUE PROCESS AS FAR AS EQUAL PROTECTION UNDER
28 THE LAW, THE COURT: OKAY, LET ME STOP YOU RIGHT THERE, I UNDERSTAND THAT MOTION.

(14)

1 (THE COURT)-ARE THERE ANY GROUNDS ON WHAT YOUR SEEKING TO CHALLENGE
2 MR. ADAIR? THE DEFENDANT; CONFLICT OF INTEREST BECAUSE -- YOU
3 WERE THE PRESIDING JUDGE AT THE TIME- THOMAS SHOWED UP
4 AND HE WAS SERVED BY YOUR BALIFF IN YOUR COURTROOM AT THE EX PARTE
5 HEARING. I'VE BEEN FALSELY ARRESTED, PROLONGED DETAINMENT, AND FALSE
6 IMPRISONED. MY WHOLE DUE PROCESS, MY CIVIL RIGHTS HAVE BEEN VIOLATED,
7 COUNSEL HAS FAILED TO NOTIFY THE COURTS. I HAVE CALLED THE
8 CALIFORNIA STATE BAR AND HAVE REPORTED MR. ADAIR TO THE STATE BAR,
9 AND I HAVE A CARD WITH THE NUMBER ON IT THAT I RECEIVED --
10 THE COURT; COMPLAINTS, SO NUMBER ONE, ALMOST OF ALL THESE ISSUES
11 [EXCEPT] POSSIBLY THE CONFLICT OF INTEREST RELATING TO THE
12 RESTRAINING ORDER -- WHICH I'LL HAVE MR. ADAIR ADDRESS IN A MOMENT --
13 SEE EXHIBIT "A" PAGE 116, R. EXCERPT 821, LINES 23 AND 26, 27, 28. THE COURT;
14 THERE INITIALLY HAD BEEN AN INDICATION THAT YOU WOULD WANT TO FILE
15 PRO PER, BUT THEN YOU ASKED TO RAISE A MARSDEN MOTION FIRST, I HEARD
16 THAT MOTION. I RULED ON IT -- PRO PER MOTION. YOU HAVE HAD OTHER HEARINGS
17 IN FRONT OF JUDGE EXARHOS, AND I DON'T KNOW WHAT HE HAS DONE OR (SEE
18 EXHIBIT "A" PAGE 117, R. EXCERPT 822 LINES 1, 3-5, 9, 10, 22, 25-25.) (THE COURT) --
19 RULED ON. -- I THINK THAT YOU INDICATED YOU MIGHT BRING ANOTHER PRO PER
20 MOTION ON THE DAY THAT [WE] DECIDED TO REFER YOU OUT FOR 1368 PROCEEDINGS.
21 -- IT WAS THE COURT'S RULING ON HOW TO PROCEED -- THE FRUIT-OF-THE-POISON-
22 OUS-TREE ARGUMENT -- [SO THE ONLY ISSUE I BELIEVE I MAY NEED SOME
23 INPUT ON TO PERHAPS BETTER UNDERSTAND THE CONCERN IS AN ISSUE
24 RAISED THAT SOMEHOW THIS COURT [IS A WITNESS"] OR HAS KNOWLEDGE
25 ABOUT THE [TRO PROCEEDINGS"]. SEE NOW EXHIBIT "A" PAGE 118, R. EXCERPT 823,
26 LINES 3-10, 12-16, 20-28. PETITIONER DENIES OMITTED PORTIONS OF EXCERPT. THE COURT;
27 MR. ADAIR, DO YOU HAVE ANY ADDITIONAL INFORMATION OR BACKGROUND ON THAT
28 ISSUE? MR. DAIR; I BELIEVE YOU DID SIGN SOME OTHER DOCUMENTS IN THE CASE.

MR. E. W. BURTON # F02720
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1 THE COURT: -- THE TRO BETWEEN MR. BURTON AND MR. THOMAS,
 2 MR. ADAIR: -- IT LOOKS LIKE YOU SIGNED THE NOTICE THE COURT: -- OSC
 3 HEARING? MR. ADAIR: THAT'S CORRECT THE COURT: OKAY, ALL RIGHT: -- SEE
 4 ANY REASON WHY ANY INVOLVEMENT I HAD IN A FAMILY LAW -- DUE TO THIS
 5 COURT'S INVOLVEMENT IN THAT CASE. MR. ADAIR: THE OTHER THING ABOUT
 6 IT IS THAT IT APPEARS THAT ANYTHING THAT YOU -- IF YOU WERE TO HAVE
 7 BEEN A WITNESS, [IT'S RELEVANT ISSUES IN THIS MATTER THAT THE
 8 DOCUMENTS THEMSELVES COULD BE USED RATHER THAN YOURSELF -- CONFLICT,
 9 THE COURT: ALL RIGHT. PETITIONER STIPULATES THE GENUINE COURT BUSINESS
 10 RECORDS, SPECIFICALLY THE TRO THAT THE HON. JUDGE HALCAREN SIGNED, AND
 11 HER BALIFF THAT SERVED THE ORDER ON MR. THOMAS ON OR ABOUT 23 FEBRUARY, AS
 12 HE APPEARED IN COURT AT EX PARTE HEARING, AFTER THREATENING TO KILL
 13 PETITIONER. MR. THOMAS WAS AT TIME IN COURT STALKING THE PETITIONER
 14 TRIAL JUDGE (TRIER OF FACT) WAS A MATERIAL WITNESS TO FACT, PETITIONERS
 15 FEARS, WAS AWARE THAT MR. THOMAS WAS A CREDIBLE THREAT, HAD GIVEN
 16 ANGELA SANDERS VERBATIM ORDERS THAT HE WAS NOT TO CALL HER RESIDENCE
 17 OR BE ANYWHERE NEAR DREONA BURTON, AND MR. THOMAS WAS SERVED WITH
 18 ORDERS TO STAY AWAY FROM PETITIONERS MINOR DAUGHTER DREONA BURTON, AN
 19 ORDER OF WHICH MS. SANDERS AND MR. THOMAS WILLFULLY VIOLATED ON 11 MARCH 04,
 20 AS MR. THOMAS DID IN FACT PHONE THE RESIDENCE OF DREONA BURTON AND
 21 LURED HER TO THE ADDRESS OF THE ALLEGED CRIME SCENE RESIDENCE
 22 ALLEGEDLY OF KIAH MINCEY A CONVICTED FELONY THAT PROSECUTION AND
 23 POLICE FAILED TO DISCLOSE, AS PETITIONER DISCOVERED THAT KIAH MINCEY
 24 WAS A LITIGANT IN A LAWSUIT BROUGHT BY PRISONERS AND PAROLEES, AND
 25 HE REPRESENTED THE VISUALLY IMPAIRED, PROSECUTION FAILED TO DISCLOSE.
 26 THIS ALLEGED VICTIM ^{AKIAH MINCEY} OF WHICH DEFENDANT RECEIVED NO NOTICE OF
 27 AFTER A FILED MOTION OF DISCOVERY ON 30 JULY 04, THAT WAS SERVED ON
 28 PROSECUTOR MS. HANNAH, WHO FAILED TO RESPOND BY COUNSEL'S ALLEGATIONS

1 SEE EXHIBIT "A" PAGE 119, R.T. EXCERPT 824, LINES 1-6, 10, 11, AND 18.
2 MR. ADAIR: MR. BURTON WOULD LIKE TO ADDRESS THE COURT AGAIN.
3 THE COURT: ALL RIGHT, MR. BURTON, YOU MAY ADDRESS ME IN PARTICULAR
4 WITH REGARD TO THE ISSUE THAT MR. ADAIR JUST ADDRESSED ON THE
5 RESTRAINING ORDER OR THE CUSTODY MATTER, THE COURT: ALL RIGHT,
6 GO AHEAD. THE DEFENDANT: YES, MA'AM-- YOU MAY REFER YOU TO
7 THE COURT CLERK'S RECORDS, (PETITIONER DENIES ALOTTED PORTIONS
8 OF EXCERPTS. SEE NOW EXHIBIT "A" PAGE 120, R.T. EXCERPT 825, LINES 2, 4-8,
9 15-21. THE COURT: ALL RIGHT, WE'LL, I THINK THAT-- THERE'S NO
10 BASIS TO RELIEVE HIM BASED ON HIS STRATEGIC DECISION NOT TO
11 CHALLENGE THIS COURT, IT WOULD HAVE HAD TO BE A CHALLENGE
12 FOR CAUSE BECAUSE THERE'S ALREADY BEEN A PEREMPTORY EXERCISED
13 AGAINST JUDGE HANDIAN.-- I FIND THAT MR. ADAIR HAS PROPERLY REPRESENTED
14 DEFENDANT AND WILL CONTINUE TO DO SO, THE MOTION IS DENIED, THE
15 RECORDING OF THIS PROCEEDING INCLUDING THE TRANSCRIPT WILL BE
16 SEALED ABSENT FURTHER COURT ORDER, WE NEED TO PROCEED NOW
17 WITH OUR JURY TRIAL, BRING THE PROSECUTION IN AND THE COURTROOM
18 WILL BE OPEN. NOTE-- THE HON. JUDGE HANDIAN PRESIDED OVER DEFENDANTS
19 PRELIMINARY HEARING, AND WAS THE COMMITTING MAGISTRATE THAT HELD
20 PETITIONER TO ANSWER ON INSUFFICIENT EVIDENCE UNLAWFULLY SEIZED
21 FROM PETITIONER'S RESIDENCE WITHOUT WARRANT IN VIOLATION OF PETITIONER'S
22 14TH AMENDMENT RIGHTS, AGAINST UNLAWFUL, AND UNREASONABLE POLICE INTRUSION
23 IN PETITIONER'S REASONABLE EXPECTATION OF PRIVACY, PETITIONER CONTENDS
24 HE WAS HELD WITHOUT PROBABLE CAUSE AS TESTIMONY AT PRELIM, ON
25 INADMISSIBLE SUPPRESSED EVIDENCE AT 1538.5 HEARING WAS INSUFFICIENT
26 TO HOLD PETITIONER TO ANSWER, PETITIONER SPECULATES THAT THE HON.
27 JUDGE HANDIAN COULDN'T BE PEREMPTORILY CHALLENGE AFTER PETITIONER
28 HAD ALREADY BEEN IN HIS COURT PRIOR.

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1 SEE EXHIBIT "A", PAGE 82, R.T. EXCERPT 753, LINES 1-16 STATES' EL CAJON,
 2 CALIFORNIA; FRIDAY, 7-22-05; 1:34 P.M. (THE FOLLOWING PROCEEDINGS
 3 WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY) THE COURT;
 4 LET'S GO ON THE RECORD BEFORE WE BRING IN THE JURY. I HAVE
 5 ANOTHER DOCUMENT THAT MR. BURTON HAD SENT TO THE COURT, IT WAS
 6 ROUTED THROUGH DEPARTMENT 7, I BELIEVE, BUT IT APPEARS TO BE
 7 [ANOTHER "PRETRIAL"] OR TRIAL MOTION THAT HE HAD WANTED THE COURT
 8 TO CONSIDER. I'LL GIVE THAT TO MR. ADAIR. IF HE THINKS IT HASN'T
 9 BEEN ADDRESSED AND HE WISHES TO ADDRESS THAT, HE CAN DO SO AT THE
 10 RIGHT TIME. MR. ADAIR: THANK YOU, YOUR HONOR, THE COURT. I THINK AT
 11 THIS TIME WE'RE READY TO BRING THE JURY IN. SEE EXHIBIT "A" PAGE 84, R.T. EXCERPT
 12 1241, LINES 1-23 (THE DAY OF PETITIONER'S SENTENCING 10-21-05) STATE'S;
 13 EL CAJON, CALIFORNIA; THURSDAY 10/21/05; 8:46 A.M. THE COURT: GOOD MORNING
 14 MR. TROCHA GOOD MORNING, YOUR HONOR. MR. ADAIR: GOOD MORNING. THE COURT: PEOPLE
 15 VERSES ERIC BURTON SCE238643. COUNSEL IF YOU'LL STATE YOUR APPEARANCES.
 16 MR. TROCHA: GOOD MORNING, YOUR HONOR KRISTIAN TROCHA FOR THE PEOPLE, MR. ADAIR;
 17 CHARLES ADAIR APPEARING FOR MR. BURTON, YOUR HONOR. HE IS PRESENT. WE'RE READY TO
 18 PROCEED. THE COURT: ALL RIGHT. THIS IS THE DAY SET FOR SENTENCING. I HAVE
 19 READ AND CONSIDERED THE PROBATION REPORT FILED SEPTEMBER 16TH. I ALSO
 20 HAVE READ AND CONSIDERED THE MOTION FOR A NEW TRIAL, WHICH WAS FAXED TO
 21 THE COURT AND RECEIVED YESTERDAY AND THEN FILED TODAY. (NOTE PETITIONER NEVER
 22 MET WITH PROBATION OFFICER, PROBATION REPORT WAS FALSE INADMISSIBLE HEARSAY
 23 AND VIOLATED PETITIONER'S 5TH AND 14TH DUE PROCESS AND EQUAL PROTECTION CLAUSES,
 24 PROBATION OFFICER RELIED ON INADMISSIBLE POLICE REPORT THAT IS NOT ACCEPTED AS
 25 A BUSINESS RECORD) THE COURT: I UNDERSTAND THAT THE DISTRICT ATTORNEY
 26 HAS RECEIVED A COPY AND IS PREPARED TO RESPOND ORALLY BUT THERE IS NO
 27 REQUEST FOR CONTINUANCE, CORRECT? MR. TROCHA: THAT'S CORRECT YOUR HONOR.
 28 SEE EXHIBIT "A" PAGE 85, R.T. EXCERPT 1242 LINES 8-19, 12-16

1 STATEMENT OF FACTS. - THE TRIAL JUDGE HON. HALOREN WAS A BIAS, CONFLICTING
2 TRIER OF FACT, IRRATIONAL, PREDJUDICIAL, AND DEPORTATED HERSELF AS A
3 MATERIAL WITNESS TO FACT ON GENUINE COURT BUSINESS RECORDS, COURTS
4 FAILURE TO GRANT PETITIONER'S MOTION FOR MISTRIAL, DEPRIVE PETITIONER OF
5 HIS FEDERALLY GUARANTEED CONSTITUTIONAL RIGHT TO A FAIR AND
6 IMPARTIAL TRIAL, AND RIGHT TO SELF REPRESENTATION AS GUARANTEED
7 BY THE U. S. CONSTITUTIONAL 6TH AND 14TH AMENDMENTS, SEE NOW
8 EXHIBIT A, PAGE 92, RTEXCERPT 917, DATED [6-21-05] LINES 1-16 EL CAJON,
9 CALIFORNIA; THURSDAY, 6/21/05; 9:20 AM (THE FOLLOWING PROCEEDINGS
10 WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY:)
11 THE COURT: ALL RIGHT, WE ARE ON THE RECORD IN PEOPLE VERSUS BURTON,
12 COUNSEL AND DEFENDANT ARE PRESENT, AS IS THE INVESTIGATING OFFICER.
13 FIRST ORDER OF BUSINESS, I RECEIVED TODAY-- I'M NOT SURE WHEN IT
14 WAS SENT-- A MOTION PREPARED BY MR. BURTON, AND I'M GOING TO RETURN
15 THAT TO MR. ADAIR. AS I MENTIONED THE OTHER DAY, MR. BURTON, IF THERE
16 ARE MOTIONS TO BE PRESENTED, THEY NEED TO COME THROUGH MR. ADAIR.
17 SO I'LL GIVE THAT TO HIM, I DON'T KNOW IF THE CONTENT WAS ALREADY
18 ADDRESSED WHEN WE RULED ON ISSUES THE OTHER DAY, BUT ANYTHING
19 THAT NEEDS TO BE BROUGHT NEED TO BE THROUGH HIM. SEE NOW EXHIBIT
20 "A" PAGE 94, RT 457, LINES 1-7, THE COURT FIRST OF ALL, I DID RECEIVE
21 ANOTHER DOCUMENT, MR. BURTON, THAT YOU HAD SENT TO THE COURT, IT JUST
22 MADE ITS WAY UP TO MY DEPARTMENT, I THINK IT OVERLAPS WITH
23 ISSUES MR. ADAIR RAISED ON THE FIRST DAY OF TRIAL, AGAIN, I'M
24 HANDING IT TO MR. ADAIR, SO IF THERE ARE ANY ADDITIONAL LEGAL
25 ISSUES THAT HE THINKS ARE APPROPRIATE TO FILE, HE CAN DO SO.
26 SEE EXHIBIT "A", PAGE 96, RTEXCERPT 0127, FARETTA PROSE MOTION
27 INDICATED BY ARROW AND ALSO LINES 1-28, ALSO SEE EXHIBIT A, PAGES
28 RT 0142, FILE STAMPED ENVELOPE CONTAINING FARETTA PROSE MOTION (ALLEGED)
ENVELOPE

PETITIONER RECEIVED A CUMULATIVE PENALTY FOR AN UNCHARGE AND
UNPROVEN CRIME. PETITIONERS 6TH AND 14TH U.S. FEDERALLY GUARANTEED
RIGHT TO, NOTICE, CONFRONTATION AND DUE PROCESS AND EQUAL PROTECTION
CLAUSES, AS WELL AS THE 6TH U.S. CONST. COMPULSORY PROCESS
PERTAINING TO THE DEPORTATION THROUGH GOVERNMENTAL MIS CONDUCT
DEPRIVED PETITIONER HIS FEDERALLY GUARANTEED RIGHT TO A FAIR TRIAL
AND RIGHT TO MAKE A DEFENSE, AS WELL AS VIOLATIVE OF THE 5TH AMEND,
U.S. CONST. DUE PROCESS AND EQUAL PROTECTION CLAUSES, SEE FURTHER
ARGUMENT AND CASE SUPPORT IN THE ATTACHED MEMORANDUM AND POINTS
OF AUTHORITIES. IN SUPPORT OF GROUNDS, THE DEPORTATION OF MATERIAL WITNESSES
RAISES THE CREDIBILITY, RATHER QUESTIONS THE CREDIBILITY OF PROSECUTIONS
ENTIRE CASE, FAILURE TO DISCLOSE THE FACT THAT KIAH MINCEY A CONVICTED
FELONY AFTER DEFENSES FILED AND SERVED DISCOVERY MOTION WAS HIGHLY
PREJUDICIAL AND VIOLATED PETITIONER'S FEDERALLY GUARANTEED DUE
PROCESS PRINCIPLES. SEE: PROSECUTIONS REBUTAL ON RECORD OF EXCERPT,
EXHIBIT "B" PAGE 23 R.T. EXCERPT 329 LINES 4-10, 20-23 MR. ADAIR:
WELL, WE'VE REQUESTED PHOTOGRAPHS -- I THINK IT STARTED WITH THE
PRIOR ATTORNEY ON THE CASE (MR. PLUMMER) APPROXIMATELY A YEAR AGO
REQUESTING PHOTOGRAPHS. AND THEY -- I'VE RENEWED -- THAT WAS IN THE FORM
OF, I THINK, A LETTER AND AN ACTUAL FILED MOTION THAT WAS NEVER
HEARD ["A DISCOVERY"] MOTION, THAT WAS LAST YEAR, I FOLLOWED UP
WITH A LETTER. THE COURT: MR. TROCHA, DO YOU HAVE ANYTHING TO SAY
IN RESPONSE? MR. TROCHA: [I DON'T KNOW THE HISTORY OF THE
PHOTOGRAPHS OR ANYTHING.] THE COURT: OKAY. SEE NOW EXHIBIT "B"
PAGE 24, R.T. EXCERPT 0023, (A LETTER DATED 7-6-04 FROM MR. PLUMMER
TO MS. HANNAH), ALSO SEE EXHIBIT "B" PAGES, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, R.T. EXCERPTS,
0011, 0012, 0013, 0014, 0015, 0016, 0017, 0018, 0019, 0020, 0021, AND 0022, LINES 1-28 ON
ALL LISTED PAGES (DESCRIBES AND IS FILED MOTION FOR DISCOVERY DATED 7-30-04 BY MR. PLUMMER)

MR. E.W. BURTON #182920
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1 SEE EXHIBIT A' PAGE 25, RTECERPT 189, LINES 21-28. (16 MARCH OS MARSDEN HEARING) THE COURT:
2 WHAT OTHER ISSUES ARE THERE BEYOND WHAT YOU'VE TOLD ME HAVE NOT BEEN
3 ADEQUATE BY THE DEFENSE? THE DEFENDANT: THE FACTS OF THE CASE HAVE BEEN
4 MISSTATED. -- I ASKED HIM (REFERRING TO MR. ADAIR) TO FILE A MOTION WITH THE
5 JUDGE -- YOURSELF -- ORDERING PROSECUTION TO TURN OVER ALL DISCOVERY
6 BECAUSE MOTIONS THAT WERE FILED BY MR. PLUMMER JULY - NOW SEE EXHIBIT A'
7 PAGE 26, RTECERPT 190 LINE 4. THE DEFENDANT -- TO COMPEL PROSECUTION TO TURN
8 OVER ALL DISCOVERY, SEE EXHIBIT A' PAGE 31, RTECERPT 195 LINES 2, 7, 89 THE COURT:
9 BEFORE WE GO DOWN HIS LIST OF COMPLAINTS. MR. ADAIR: WELL, PART OF IT IS MR.
10 BURTON HAS BEEN DOING A LOT OF RESEARCH ON HIS OWN IN THE LAW LIBRARY,
11 AND HAS A LOT OF LEGAL THEORIES AS FAR AS WHY THE CASE SHOULD BE
12 DISMISSED, SEE EXHIBIT A' PAGE 31, RTECERPT 195, LINES 14, 15, 20-25, 27, 28. THE COURT:
13 WHY DON'T WE GO THEN TO THE ISSUES HE'S RAISED, AND IF YOU COULD BRIEFLY
14 RESPOND. HE FIRST RAISED -- WHEN HE CALLS YOUR OFFICE TO IMPART INFORMATION,
15 IS THAT SOMETHING THAT GETS COMMUNICATED TO YOU? MR. ADAIR: -- BUT I'M
16 NOT ALWAYS IN MY OFFICE, OF COURSE. AND THEN I DO HAVE AN ASSISTANT WHO IS
17 USUALLY THERE BETWEEN THE HOURS OF ABOUT 10:30 AND 4:30. BUT SHE'S NOT
18 ALWAYS THERE. SHE ALSO DOES ERRANDS, FILES PAPER WITH THE COURTS.
19 THE COURT: AND SINCE THE TIME OF THE CALL TO YOU, WHICH APPEARS TO HAVE
20 BEEN EARLY JANUARY, I TAKE IT YOU HAVE HAD - SEE EXHIBIT A' PAGE 32, RTECERPT
21 196, LINES 1, 2, 4-8, 13-20, 22, 23, 25-28 - MEETINGS WITH MR. BURTON PERSONALLY?
22 (THE COURT) MR. ADAIR: -- FOR A WHILE MR. BURTON WAS HOUSED AT THE DOWNTOWN
23 JAIL, WHICH IS CONVENIENT BECAUSE IT'S NEAR MY OFFICE. HE WAS TRANSFERRED
24 TO GEORGE BAILEY SEVERAL MONTHS AGO. AND THAT TAKES BASICALLY HALF A DAY
25 OUT OF YOUR WORKING DAY TO DO A VISIT AND DO THE TRANSPORTATION DOWN THERE
26 AND BACK, THE COURT: ADEQUATE TIME SPENT AND HE'S REFERENCED TO ADEQUATE --
27 I THOUGHT HE SAID PRO VISIT, BUT I'M NOT QUITE SURE. MR. ADAIR: I THINK HE
28 MEANT PROFESSIONAL VISIT. THE COURT: -- MEETING WITH HIM, AND SO DO YOU

MR. E.W. BURTON #FO21720
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 COR CORANCA, 93212

1 HAVE ANY TYPE OF ESTIMATE TO--SINCE YOU CAME ON THE CASE BACK IN NOVEMBER,
 2 DO YOU HAVE ANY WAY TO ESTIMATE HOW OFTEN YOU'VE EITHER MET FACE TO FACE
 3 OR BY- MR. ADAIR? I DON'T KNOW.-- I DON'T KNOW HOW MANY TIMES ON THE
 4 TELEPHONE WE'VE TALKED.-- I DID NOT TALK TO HIM MONDAY BECAUSE I--
 5 AFTER WE TRIALED THE CASE FOR TWO DAYS, I HAD TO LEAVE IMMEDIATELY
 6 TO MAKE AN APPOINTMENT DOWNTOWN, [HE WAS NOT IN THE COURTROOM FOR
 7 THE TRAILING], SEE EXHIBIT A, PAGE 33, AT 197 LINES 1, 4, 6-8, 10, 12, 16-20.
 8 THE COURT: HE INDICATES THAT--INSUFFICIENT MR. ADAIR: WELL THE
 9 THREATS ON THE CELL PHONE--I HAVE NOT CHECKED ON THAT. BUT MY
 10 UNDERSTANDING WOULD BE ANY CONVERSATIONS WITH THREATS (TO DEFENDANT
 11 BY MR. THOMAS) WOULD HAVE BEEN RECORDED ON SOME SORT OF VOICEMAIL THAT
 12 WOULD HAVE-- THE COURT: HE'S RAISED THE ISSUE ABOUT FORENSIC
 13 TESTING MR. ADAIR:-- AGAIN, I CAME ON THE CASE SIX--APPROXIMATELY
 14 SIX MONTHS, SEVEN, EIGHT MONTHS--EIGHT MONTHS LATER, AND AT LEAST
 15 IN MY MIND, IT-- IT WOULD APPEAR THAT ANY ATTEMPT TO DO LUMINAL TESTING
 16 OR WHATEVER WILL NOT BE PRODUCTIVE. SEE NOW EXHIBIT "A" PAGE 34, RT EXCEPT
 17 198, LINES 3, 6, 8-17, 21-23, AND 28 THE COURT: AND THE MOTION TO SUPPRESS?
 18 THOSE MOTIONS, MR. ADAIR, I THINK HE WOULD HAVE PREFERRED THEY BE DONE,
 19 THE COURT: SOONER IN THE CASE? MR. ADAIR: SOONER. THE COURT: WERE THOSE
 20 DONE BY YOU OR BY MR. PLUMMER? MR. ADAIR: I THINK BOTH. I THINK MR. PLUMMER
 21 FILED A NUMBER OF MOTIONS [INCLUDING A DISCOVERY MOTION, AND THAT THEY
 22 WERE BASICALLY TAKEN OFF CALENDAR.] THE COURT: [PROTECTIVE ORDER AND]
 23 DO YOU HAVE ANY UNDERSTANDING? MR. ADAIR: AS FAR AS--EXCUSE ME.
 24 THE COURT: ALL RIGHT. MR. ADAIR: SOME OF THE MOTIONS THAT MR. BURTON
 25 FEELS ARE VERY IMPORTANT IN HIS CASE,--IN MY VIEWPOINT,--SUCH AS
 26 THE REQUEST FOR WRIT OF HABEAS CORPUS, IT SEEMS LIKE A WASTE OF TIME TO--
 27 SEE EXHIBIT "A" PAGE 35, RT EXCEPT 199, LINES 1-3, 4, 5, 8, 9, 11, 12, 16, 17, 18, 25-28
 28 CONCENTRATE ON THAT WITH THE--ON TRIAL ISSUES. THE COURT: HE

1 RAISED AN ISSUE ABOUT FALSE STATEMENTS ON THE RECORD, MR. ADAIR;
2 I THINK WHAT HE MAY BE REFERRING TO IS WHEN I WROTE UP A STATEMENT OF
3 FACTS, HE DISAGREED WITH IT AND FELT -- HAS BEEN THAT THE STATEMENT
4 OF FACTS HAS TO BE COMPLETELY ACCURATE AND DETAILED; OTHERWISE HE LOSES
5 SOME RIGHTS CONCERNING -- THE FACTS COME OUT IN THE HEARING ON THE
6 MOTION. AND THAT'S BASICALLY WHAT I TRIED TO DO IS FRAME THE ISSUE.
7 THE COURT: IN YOUR PROFESSIONAL JUDGEMENT, WHAT NEEDS TO BE DONE HAS
8 BEEN DONE? MR. ADAIR: SOME OF THE THINGS THAT COULD STILL BE DONE
9 ARE GETTING DOCUMENTS, AND WE ISSUED SUBPOENAS FOR THE (SEE EXHIBIT A'
10 PAGE 36, R.T. EXCERPT 200, LINES 1, 2, 6, 7, 11, 12, 13, 14, 17, 19-22) DOCUMENTS. AND
11 THE MAJOR THING WOULD BE THE ARREST REPORTS CONCERNING MR. THOMAS.
12 MR. ADAIR: LAW ENFORCEMENT AGENCIES, SAN DIEGO POLICE DEPARTMENT, I DON'T
13 THINK, HAS RESPONDED. THE COURT: ALL RIGHT [YOU RAISED AN ISSUE TO ^{Pretrial} MOTION
14 TO COMPEL DISCOVERY. IS THERE STILL LURKING DISCOVERY ISSUES?]
15 MR. ADAIR: -- FIRST OFF, -- AND IT CAN'T BE RESOLVED, -- FIRST OFF, I'VE
16 SENT A LETTER TO HER REQUESTING CERTAIN ITEMS, MR. PLUMMER DID THE
17 SAME, MR. PLUMMER FILED A MOTION THAT WAS SERVED ON HER] (REFERRING
18 TO D.A. MS. HANNAH) -- DISCOVERY ISSUES WITH THE PROSECUTOR, SEE EXHIBIT A'
19 PAGE 37, R.T. EXCERPT 201, LINES 9-12, 16-20, 26-28, THE COURT: AND THEN
20 ANY OTHER PRETRIAL MOTIONS THAT YOU'VE BEEN DISCUSSING OR HAVE AN ISSUE
21 ABOUT, THAT YOU'RE AWARE OF? MR. ADAIR: I THINK MR. BURTON HAS A NUMBER OF
22 OTHER -- THE COURT: ALL RIGHT. ANYTHING ADDITIONAL THAT YOU WANTED
23 TO SAY IN RESPONSE TO THE SUMMARY OF THE COMPLAINTS THAT MR. BURTON
24 GAVE? MR. ADAIR: NO, YOUR HONOR. MR. ADAIR: YOUR HONOR, MR. BURTON HAS TWO
25 PAPERS HERE. THE FIRST TALKS ABOUT TRIAL STRATEGY AND I GUESS A DECISION
26 OF COUNSEL OR THE DEFENDANT AS TO TRIAL STRATEGY. SEE EXHIBIT A', PAGE 38, R.T.
27 EXCERPT 202, LINES 2, 3, 8-11, 15-17, 21. MR. ADAIR: MAY I PASS THESE ON TO YOU, YOUR HONOR?
28 THE COURT: SURE. THANK YOU. THE COURT: AND THEN YOU ALSO, IT LOOKS LIKE, YOU

1 PULLED SOME LANGUAGE OUT OF A CASE RELATING TO THE FACT THAT THE
2 DECISION MAKING ON STRATEGY IS THE DUTY OF DEFENSE COUNSEL, BASED
3 UPON THE DEFENDANT CONSENTING -- THE COURT: WELL MAKE THOSE
4 PART OF THE COURT FILE AS -- SO WE'LL HAVE A RECORD OF THAT. THE
5 COURT: OKAY, SEE EXHIBIT "A" PAGE 18, RT EXCERPT 182, LINES 4, 5, 7-9, 11-
6 16, 22, 23. THE COURT: OKAY, AND DO YOU FEEL THAT MR. ADAIR HAS NOT
7 PROPERLY REPRESENTED YOU? THE COURT: AND WHY DO YOU FEEL THAT
8 WAY? THE DEFENDANT: WELL, THERE'S BEEN A BREAK IN THE
9 ATTORNEY/CLIENT PRIVILEGE. -- I HAD CALLED HIS OFFICE,
10 REQUESTING TO SEE HIM, BECAUSE I HAD SOME INFORMATION
11 FOR HIM ON SOME MATTERS PERTAINING TO MY CASE. HOWEVER --
12 A WOMAN SHOWED UP, ATTEMPTING TO INTERVIEW ME STATING THAT
13 HER CAPACITY WAS SOME SORT OF PSYCHIATRIST OR WHATEVER,
14 I REFUSED THE INTERVIEW -- LAW, AND I FELT THAT I WAS VIOLATED
15 AS FAR AS MY RIGHT TO PRIVACY AND MY ATTORNEY/CLIENT PRIVILEGE
16 WAS VIOLATED BY THIS - SEE EXHIBIT "A", PAGE 19, RT. EXCERPT 183, LINES,
17 9, 12-14, 19-21, 24-28. THE DEFENDANT: -- ASSUMING I WOULD HAVE A
18 VISIT WITH MR. ADAIR. QUITE TO MY SURPRISE, IT WAS BY SOME ONE
19 THAT WAS NOT MY ATTORNEY. THE COURT: LET ME MAKE SURE I
20 UNDERSTAND. THE COURT: OKAY NOW, -- TELL ME SOMETHING ELSE
21 BEYOND THIS VIOLATION OF ATTORNEY/CLIENT PRIVILEGE, THE COURT:
22 IT'S NOT A CAPITAL CASE. THE DEFENDANT: WELL, IT HAS TO DEAL
23 WITH THE REST OF MY LIFE, AND I FEEL THAT TIME AND EFFORTS
24 NEEDED TO TAKE PLACE AS FAR AS PUTTING THIS CASE TOGETHER AS
25 FAR AS STRATEGY, -- I FEEL AS THOUGH THAT HAS NOT BEEN DONE.
26 SEE EXHIBIT "A", PAGE 20, RT. EXCERPT 184, LINES 1-8, 10. -- (DEFENDANT) --
27 THERE'S A CONFLICT OF INTEREST HERE, AND IT'S BEEN FROM THE VERY
28 BEGINNING. I HAVE EVIDENCE HERE THAT YOU CAN LOOK AT IF THE BALIFF

1 CAN TAKE THIS. THE COURT: SURE, I'LL TAKE A LOOK AT THAT
2 SEE EXHIBIT "A", PAGE 26, RT EXCERPT 190, LINES 14-21, 27, 28, ALSO
3 SEE EXHIBIT "A" PAGE 27, RT EXCERPT 191, LINES 1-4, 7-10. THE COURT:
4 I DO WANT TO NOTE, FOR THE RECORD, THE DOCUMENT YOU HANDED TO ME
5 WHEN YOU WERE TALKING ABOUT THE LADY WHO CAME TO VISIT YOU
6 IDENTIFIES HER AS CATHERINE DIFRANCESCA, WHO THE COURT
7 RECOGNIZES AS A PSYCHOLOGIST OR A PSYCHIATRIST WHO DOES DO
8 COURT-APPOINTED EVALUATIONS AND OTHER WISE. SO SHE DOES
9 APPEAR TO BE SOME TYPE OF MENTAL HEALTH EXAMINER, AND THE
10 DATE REFERENCED IS -- I'M NOT QUITE SURE HOW TO READ THIS
11 DOCUMENT, BUT IT LOOKS LIKE JANUARY 5TH OF '05. THE COURT: I'LL
12 GIVE THIS BACK TO MR. ADAIR, BECAUSE HE MAY BE ABLE TO INTERPRET
13 IT, AND WE CAN AT LEAST PINPOINT THE DATE. THE DEFENDANT: MY
14 POINT IS I HAD ALREADY EXPRESSED, AS FAR AS MY RIGHTS TO
15 REFUSE, THE COURT: [I DON'T NEED YOU TO REARGUE THE MOTION.]
16 THE DEFENDANT: YES MA'AM, MR. ADAIR: IT LOOKS LIKE 5
17 JANUARY, YOUR HONOR. THE COURT: ALL RIGHT, I'LL TAKE THAT BACK
18 FOR THE MOMENT. SEE EXHIBIT "A", PAGE 30 RT EXCERPT 194, LINES 9-11,
19 19-23, AND 27, MR. ADAIR: AS FAR AS THE PSYCHOLOGIST, DR. DIFRANCESCA,
20 YOUR HONOR INDICATED YOU KNOW HER AND HER REPUTATION, I NORMALLY
21 USE HER ON ANY TYPE OF SERIOUS CASE -- MR. BURTON REFUSED TO
22 TALK TO HER, AND STATED TO ME THAT HE DOES NOT WISH HIS
23 MENTAL STATE TO BE INQUIRED INTO AND FOR A LONG TIME
24 REFUSED TO SIGN ANY CONSENT FORMS CONCERNING HIS RECORDS
25 UNTIL FAIRLY RECENTLY, AND THOSE CONSENT FORMS WERE TO
26 GET RECORDS FROM THE -- CONCERNING HIS EYESIGHT AND
27 TREATMENT FOR THAT. SEE EXHIBIT "A", PAGE 41, RT EXCERPT 205,
28 LINES, 4-8, 15-18, 24-26 - MR. ADAIR: COULD I ADD ONE THING,

1 YOUR HONOR? THE COURT: YES YOU MAY, MR. ADAIR. IT JUST POPPED
2 INTO MY MIND, PART OF THE PROBLEM WITH DR. DIFRANCESCA -- AND
3 I JUST REMEMBERED THIS -- IS THAT I HAD ASKED HER
4 TO SEE MR. BURTON, SHE GAVE ME A TIME -- EARLIER THAN
5 I WAS ANTICIPATING. WHEN I DID TALK TO MR. BURTON, HE
6 BASICALLY TOLD ME THAT HE WAS UPSET ABOUT IT AND ALSO THAT
7 HE WAS NOT GOING TO BE INTERVIEWED BY DR. DIFRANCISCA OR
8 ANY PSYCHOLOGIST. THE COURT: OKAY. THEN AT THIS POINT, WE HAD
9 -- I WAS ATTEMPTING TO HAVE MS. HANNAH BE CALLED BACK
10 BECAUSE WE DID NEED TO DEAL WITH THE ISSUE OF THE EVIDENCE
11 THAT MIGHT BE ADMITTED. SEE EXHIBIT "A" PAGE 45, RT EXCEP,
12 151; LINES 1-17, 20-28 -- STATES' SAN DIEGO, CALIFORNIA; WEDNESDAY
13 MARCH 16, 2005, 2:01 P.M. THE COURT: GOOD AFTERNOON, MR. ADAIR.
14 GOOD AFTERNOON, YOUR HONOR. THE COURT: WE'RE ON THE RECORD
15 IN PEOPLE VERSUS ERIC WILTON, COURT NUMBER SEE 238643,
16 COUNSEL, STATE YOUR APPEARANCES, MS. HANNAH: GOOD
17 AFTERNOON, YOUR HONOR, MARIA HANNAH, ON BEHALF OF THE PEOPLE,
18 MR. ADAIR: CHARLES ADAIR, ON BEHALF OF ERIC BURTON, YOUR HONOR.
19 THE COURT: ALL RIGHT, AND WE HAVE, BEFORE THE LUNCH RECESS,
20 [HAD A CHANCE TO TALK IN CHAMBERS ABOUT HOW WE WILL PROCEED
21 -- BECAUSE THE COURT IS GOING TO BE DARK ON MONDAY AND TUESDAY,
22 WE WILL BE TRAILING THE TRIAL UNTIL MARCH 23RD, WEDNESDAY.]
23 COUNSEL ARE BOTH ESTIMATING THAT THE CASE SHOULD BE
24 COMPLETELY PRESENTED AND ARGUED AND SUBMITTED TO THE JURY
25 NO LATER THAN THE 29TH; IS THAT CORRECT? MS. HANNAH: IT IS.
26 MR. ADAIR: THAT'S CORRECT, YOUR HONOR. HOWEVER, IF IT DOES GO
27 LONGER -- AND, OBVIOUSLY, IT'S HARD TO PREDICT -- THEN WE WOULD
28 HAVE, I GATHER, A RECESS UNTIL YOUR HONOR GETS BACK IN TOWN. THE COURT: WE WOULD.

1 WARNINGS REQUIRED BY ESTELLE THAT HE HAD A RIGHT
2 TO REFUSE THE COURT ORDERED 1368 HOLD, AS THE COURT NOT
3 ONLY WAS OVERREACHING, AS HE HAD ALREADY BEEN DEEMED
4 LAW FULLY COMPETENT BY THE HON. JUDGE PRECKEL ON 11-05-04,
5 AND HE HAD BEEN AFTER WHICH ALSO DETERMINED TO BE
6 LAW FULLY COMPETENT, COUNSEL ADAIR VIOLATED PETITIONER'S
7 14TH U.S. CONST AMENDMENT RIGHTS WITH INEFFECTIVE ASSISTANCE
8 IN FAILING TO UPHOLD, AND STAND UP FOR HIS DUE PROCESS RIGHTS.
9 COUNSEL FAILED TO INFORM PETITIONER THAT HIS TRIAL DATE
10 OF 24 MARCH 05, HAD BEEN TRIED PAST IT'S LEGAL STATUTORY
11 REQUIREMENT, INSTEAD PREJUDICIALLY PLACED AN OVERREACHING
12 1368 HOLD ON DEFENDANT, COUNSEL WITH AFORETHOUGHT ON 23 MARCH
13 05- IN DEFENDANT'S ABSENCE THAT HE WAS BRINGING A 1368 HOLD,
14 IN DIRECT CONFLICT, AS PETITIONER RETURNED TO COURT REITERATING
15 HIS 6TH AND 14TH AMENDMENT RIGHT TO SELF REPRESENTATION BY
16 MAKING A FARETTA PRO SE MOTION, AND AFTER PETITIONER INTER-
17 JECTED HIS FARETTA PRO SE MOTION COUNSEL IN DIRECT CONFLICT
18 OF INTEREST FOLLOWED WITH A 1368 HOLD, PETITIONER OBJECTED,
19 REQUESTED A MARSDEN AND AN ATTORNEY REPRESENT HIM FOR HIS
20 MARSDEN, AS HE WAS CONSTITUTIONALLY GUARANTEED A RIGHT
21 TO COUNSEL AT EVERY STAGE OF HIS PROCEEDINGS, THE COURT
22 IN FAILING TO GRANT ASSISTANCE OF COUNSEL FOR HIS MARSDEN,
23 BEFORE ORDERING AN UNCONSTITUTIONAL 1368 HOLD ON DEFENDANT
24 FURTHER VIOLATED PETITIONER'S RIGHT, SPECIFICALLY 6TH AND 14TH
25 DUE PROCESS AND EQUAL PROTECTION CLAUSES, SEE EXHIBIT 'A' PAGE,
26 3, RT EXCERT II LINES 20-24, 27 AND 28- THE DEFENDANT: I HAVE
27 INEFFECTIVE COUNSEL, AND THE CONSTITUTION OF THE UNITED STATES,
28 OF THE 6TH AMENDMENT GUARANTEES ME THE RIGHT TO HAVE

1 EFFECTIVE COUNSEL, AND BEING CHARGED WITH A FELONY
2 AND SO SAID THAT I AM, EVERY LEVEL OF THESE PROCEEDINGS
3 AND TRIAL. -- COUNSEL, AS GUARANTEED BY MY RIGHTS AS THE
4 ACCUSED BY THE CONSTITUTION OF THE UNITED STATES,
5 SEE ALSO EXHIBIT "A", PAGE 8, AT EXCERPT 21 LINES 5-15
6 (11-05-04) HON. JUDGE PRECKEL - STATES "I CANNOT GET INSIDE
7 YOUR HEAD IN A MANNER OF SPEAKING, BUT CLEARLY THE MANNER
8 WHICH YOU HAVE PRESENTED HERE THIS AFTERNOON, THE MANNER
9 IN WHICH YOU HAVE COGENTLY AND LOGICALLY SPOKEN AT LENGTH
10 CONCERNING YOUR CASE, ALL OF THAT CAUSES THE COURT TO
11 CONCLUDE THAT YOU'RE ABSOLUTELY COMPETENT, AS A MATTER
12 OF LAW, AT THIS TIME SUCH THAT THESE CRIMINAL PROCEEDINGS
13 WILL GO FORTH WITHOUT UNDUE INTERRUPTION FOR PURPOSES
14 OF A 136B EXAMINATION EVALUATION AND HEARING, I FIND NOT
15 EVEN A SCINTILLA OF EVIDENCE AS TO SUPPORT OR WARRANT
16 THE SUSPENSION OF CRIMINAL PROCEEDINGS IN THIS CASE.
17 SEE EXHIBIT "A" PAGE 4, AT EXCERPT 13, LINES 4-8, 10, 16-28.
18 (MARSDEN HEARING 11-05-04) MR. PLUMMER: I ALSO FILED DISCOVERY
19 MOTIONS ON HIS BEHALF -- FILED AN INFORMAL REQUEST AND A
20 MOTION FOR DISCOVERY. THE FACT OF THE MATTER IS THAT MR. BURTON
21 -- HE THINKS I'M NOT ADEQUATELY REPRESENTING -- APPROPRIATE
22 DEFENSE FOR HIM -- I THINK HE HAS'NT REQUESTED A NEW
23 ATTORNEY BEFORE. HE DID HAVE P.D. AND AN A.P.D. BRIEFLY, BUT THEY
24 CONFLICTED OFF OF HIM BECAUSE OF THEIR REPRESENTATION OF
25 SOME OF WITNESSES IN THIS CASE AND I WAS APPOINTED, SO
26 THIS IS HIS FIRST REQUEST FOR A NEW ATTORNEY. I THINK HE DES-
27 ERVES A CHANCE TO GET A NEW ATTORNEY AND TO WORK WITH SOMEBODY
28 THAT HE HAS CONFIDENCE IN AND CAN HELP HIM LITIGATE THIS CASE

1 IT IS A VERY, VERY IMPORTANT CASE TO HIM, I MEAN, HE'S
2 FACING A SUBSTANTIAL PERIOD OF TIME IN PRISON, IF NOT THE
3 REST OF HIS LIFE, AND HE UNDERSTANDS THAT AND HE'S
4 UNDERSTANDABLY CONCERNED ABOUT THAT AND UNDERSTANDABLY
5 HE HAS SOME CONCERNS ABOUT MY REPRESENTATION OF HIM.
6 SO I WOULD JOIN IN HIS REQUEST THAT-- SEE EXHIBIT A, PAGE
7 5, RT EXCERPT 18, LINE 1-7, 12, 13, 15, 16, 17, 19, 20, 21, 23, 24, 27, 28,
8 PETITIONER DENIES OMITTED PORTIONS. THE COURT: ARE YOU PREPARED
9 TO WAIVE YOUR SPEEDY TRIAL RIGHTS? THE DEFENDANT: NO, I'M NOT
10 PREPARED TO WAIVE MY ~~SPEEDY TRIAL~~ ^{OVER} RIGHTS TO A SPEEDY TRIAL.
11 THE COURT: WELL, THEN THE COURT IS NOT PREPARED TO SIMPLY
12 JOIN IN MR. PLUMMER'S ACQUIESCENCE TO YOUR MOTION FOR NEW COUNSEL
13 -- I'VE REVIEWED THE 1538.5 MOTION TO SUPPRESS PHYSICAL
14 EVIDENCE. -- PARENTHETICALLY, YES, IT COULD HAVE BEEN BETTER
15 DELINEATED WITH GREATER SPECIFICITY WHAT ITEMS WERE
16 SOUGHT TO BE SUPPRESSED, BUT-- THE COURT-- THAT
17 SHORTCOMING WOULD NOT OCCASION THE OUTRIGHT DENIAL OF THE
18 MOTION OR OF ANY COURT REFUSING TO HEAR THE MOTION ON ITS
19 MERITS. -- THE COURT: SO THE ONLY REASON THAT I WOULD
20 GRANT YOUR REQUEST IS, -- THERE'S A BREAK DOWN OF THE
21 ATTORNEY/CLIENT RELATIONSHIP, BUT IF YOU THINK THAT--
22 SEE NOW EXHIBIT "A" PAGE 6, RT. EXCERPT 19 LINES 1-11 THE COURT:
23 -- I'M GOING TO GRANT YOUR REQUEST FOR NEW COUNSEL AND THEN
24 HAVE THAT NEW ATTORNEY FORCED TO TRIAL ON DECEMBER 6TH, A
25 MONTH FROM NOW, GIVEN THE PARAMETERS OF THIS CASE AND THESE
26 CHARGES AND THESE ALLEGATIONS SO THAT BY SO DOING YOU CAN
27 TRY AND SET UP AN ARGUMENT ON APPEAL THAT ONCE AGAIN
28 YOU WERE DEPRIVED OF EFFECTIVE COUNSEL BECAUSE COUNSEL

1 WAS FORCED TO GO TO TRIAL FASTER THAN WOULD OR SHOULD
2 HAVE BEEN THE CASE HAD YOU WAIVED YOUR SPEEDY TRIAL
3 RIGHTS AND ALLOWED COUNSEL TO MORE FULLY INVESTIGATE
4 OR PREPARE THE CASE, SO YOU'RE NOT GOING TO HAVE YOUR
5 CAKE AND EAT IT, TOO, IS WHAT I'M TELLING YOU. STATEMENT
6 OF RELEVANT FACTS - THE COURT ON 11-05-04 HAD ALREADY
7 VIOLATED PETITIONERS SPEEDY TRIAL RIGHTS PRIOR TO THE
8 MARS DEN HEARING DUE TO NEGLECT BY THE POLICE, BY WHICH
9 ARRESTING OFFICER HOLMES WAS OUT OF THE COUNTRY, SEE
10 EXHIBIT "F" PAGE 3 RT, EXCERPT 1, LINES 1-28, ALSO SEE EXHIBIT "F"
11 PAGE 4, RT EXCERPT 2, LINES 1-11. STATE'S "NOVEMBER STA, 2004, 1130
12 P.M. EL CATON, CA, DEPT. 12 - THE COURT: LADIES AND GENTLEMEN, GOOD
13 AFTERNOON, WE'RE ON THE RECORD IN THE CASE OF THE PEOPLE
14 VERSUS ERIC BURTON SCE 238643. COUNSEL, YOUR APPEARANCES,
15 PLEASE. MR JARAMILLO, GOOD AFTERNOON, YOUR HONOR. JORGE JARAMILLO
16 FOR THE PEOPLE. MR. PLUMMER; LEE PLUMMER ON BEHALF OF
17 ERIC BURTON, WHO IS PRESENT, BEFORE THE COURT IN CUSTODY,
18 THE COURT: ALL RIGHT. THIS MATTER WAS TRIALED FROM THE
19 CALENDAR, HAD BEEN SET FOR HEARING OF THE DEFENDANTS
20 MOTION TO SUPPRESS PURSUANT TO PENAL CODE SECTION 1538.5,
21 AND I UNDER STAND THAT THE PEOPLE HAVE A MOTION TO
22 CONTINUE THAT HEARING. MR. JARAMILLO: THAT'S CORRECT,
23 YOUR HONOR. THE PEOPLE WOULD REQUEST TO CONTINUE THE
24 1538.5. WE HAVE AN OFFICER WHO IS OUT OF THE COUNTRY
25 AT THIS TIME. THE COURT: AND WHAT FRIDAY BETWEEN NOW AND
26 THE DECEMBER 6TH TRIAL DATE DO YOU PROPOSE? MR. JARAMILLO:
27 ANY FRIDAY THAT WORKS WITH THE DEFENSE COUNSEL'S CALENDAR
28 MR. PLUMMER: YOUR HONOR, MY CLIENT IS REQUESTING THE APPOINTMENT

1 OF NEW COUNSEL. HE'S REQUESTING A MARSDEN HEARING,
2 THE COURT! WELL, WE'LL GET TO THAT AS THE NEXT
3 ORDER OF BUSINESS, BUT STAYING WITH THE FIRST
4 ORDER OF BUSINESS, [PRESUPPOSING THAT YOU CONTINUED
5 ON THE CASE, MR. PLUMMER, WHAT'S YOUR AVAILABILITY
6 ON FRIDAY MORNING BETWEEN NOW AND DECEMBER 6TH?
7 MR. PLUMMER: I COULD BE AVAILABLE FOR NOVEMBER 19TH
8 YOUR HONOR. THE COURT! MR. JARAMILLO, WILL THAT WORK?
9 MR. JARAMILLO: YES YOUR HONOR. THE COURT! ALL RIGHT.
10 THEN [IRRESPECTIVE OF THE ISSUE OF WHO IS GOING TO
11 REPRESENT MR. BURTON PRESENTLY, THE MOTION TO SUPPRESS
12 WILL BE RESET FOR HEARING ON FRIDAY NOVEMBER 19TH
13 AT 9:30 IN THE MORNING IN DEPARTMENT 11 OF THIS COURT
14 SEE EXHIBIT F PAGES 5 & 6 AT EXCERPT 0028 (PROSECUTIONS
15 MOTION TO CONTINUE LINES 1-28, SEE ALSO EXHIBIT F, PAGE 6,
16 EXCERPT 0029, OF THE SAME, LINES 1-28. ON 19 JULY 05
17 COUNSEL PER DEFENDANT'S REQUEST PRIOR TO THE JURY BEING SWORN
18 TO DISMISS DUE TO LACK OF SPEEDY TRIAL - SEE EXHIBIT F, PAGE 1, RT.
19 EXCERPT 320 LINES 22-28, ALSO EXHIBIT "F" PAGE 2, EXCERPT
20 321 LINES 1-19. MR. ADAIR: THERE ARE ADDITIONAL MOTIONS I'D
21 LIKE TO MAKE ON BE HALF OF MR. BURTON. THE COURT WELL, WHY
22 DON'T WE GO AHEAD AND DO -- MR. ADAIR: AS FAR AS THE REQUEST
23 FOR DISMISSAL BASED UPON A LACK OF SPEEDY TRIAL, YOUR HONOR.
24 MR. BURTON -- APPARENTLY HIS TRIAL WAS DELAYED LAST FALL,
25 I THINK THIS WAS BEFORE I WAS INVOLVED IN IT. IT WAS DUE
26 TO AN -- APPARENTLY A PROSECUTION WITNESS, ONE OF THE
27 OFFICERS WHO WAS APPARENTLY OUT OF THE COUNTRY, AND
28 THE TRIAL WAS DELAYED DUE TO THE UNAVAILABILITY OF THAT

PARTICULAR OFFICER, THE COURT, MR. TROCHA, DO YOU HAVE
ANY INPUT ON THAT ISSUE? MR. TROCHA; LET ME CHECK, YOUR HONOR
THERE HAVE BEEN SEVERAL CONTINUANCES. IS THIS THE ONE
ON OCTOBER 25TH? MR. ADAIR: IT'S OUR POSITION THAT THE
POLICE FORCE IN EL CAJON WAS NEGLIGENT IN LETTING HIM GO
ON HIS VACATION OR LEAVE, WHICH RESULTED IN THE DELAY OF THE
TRIAL AGAINST MR. BURTON, WHICH RESULTED IN A LACK OF SPEEDY
TRIAL FOR MR. BURTON UNDER THE CALIFORNIA AND U.S. CONSTITUTIONS
MR. TROCHA: AS TO THAT POINT, YOUR HONOR, REGARDLESS OF
WHETHER OR NOT THE COURT FOUND GOOD CAUSE -- I NOTE THAT
THE TRIAL - JANUARY 31ST OF THIS YEAR, MARCH 14TH OF THIS YEAR,
AND MARCH 16TH OF THIS YEAR (CONTINUANCES) THE COURT WILL
-- AND WHATEVER POINTS WERE MADE TO JUDGE EXARHOS AT THE
TIME ON OCTOBER 13TH, 04, WHEN HE VACATED THE OCTOBER 25TH
TRIAL DATE THOSE WERE MADE FOR THE RECORD AND HE RULED
BASED ON THE -- THE TRIAL JUDGE PREJUDICIALLY AND ERRONEOUSLY
DENIED DEFENSE MOTION FOR DISMISSAL, OF FURTHER NOTE
PETITIONER WAS ALSO DENIED HIS RIGHT TO BE PRESENT IN
COURT 1-31-05, THUS VIOLATING HIS FEDERALLY GUARANTEED U.S.
CONST 14TH AMENDMENT DUE PROCESS AND EQUAL PROTECTION
CLAUSE TO BE PRESENT WHEREAS HIS ABSENCE DENIED HIM
HIS RIGHT TO MAKE A DEFENSE PERSONALLY AS GUARANTEED
BY THE U.S. CONSTITUTION. SEE EXHIBIT F PAGE 12, RT EXCERPT
0144, LINES 1-28, PETITIONER DENIES OMITTED PORTIONS, ALSO
SEE EXHIBIT F PAGE 13, RT EXCERPT 0143, LINES 1-28, (10-21-05)
SEE EXHIBIT A PAGE 88, RT EXCERPT 1245, LINES 18-24, THE
COURT, BRIEF REPLY, MR. TROCHA: MR BURTON HAS A DOCUMENT,
WHICH -- IT'S A COPY, I GUESS, OF THE DOCUMENT, WHICH HE HAD

FILED APPARENTLY BACK IN JULY. I BELIEVE IT APPEARS
TO BE MAILED TO THE COURT AND PART OF MANY ISSUES
THAT HE RAISES IN THE DOCUMENT APPEARS TO BE A
FARETTA MOTION. SEE EXHIBIT "A" PAGE 85, RT EXCERAT
1242, LINES 8-10, 12-16 MR ADAIR FINE, THANK YOU, YOUR HONOR,
YOUR HONOR, THE FIRST ISSUE, I BELIEVE, AS RAISED IN OUR
PAPERS ARE MR. BURTON'S FARETTA (AROSE) MOTION, -- HE
HAD MAILED IT TO THE COURT AND IT HAD BEEN FILED
APPARENTLY ON OR ABOUT JULY 7TH OF THIS YEAR BEFORE
TRIAL STARTED. AND I BELIEVE TRIAL STARTED ON JULY
19TH CONCERNING THE CASE, AND IT'S OUR CONTENTION
THAT THAT NEEDED TO BE RULED ON. SEE EXHIBIT "A"
PAGE 87, RT EXCERAT 1243, LINES 14, 16, 18-23. MR ADAIR,
THE SITUATION REALLY WOULD GIVE RISE TO A - ACQUITTAL -
FOR ALL OF THOSE REASONS AND PARTICULARLY THE
REASONS THAT IT IS IN THE INTEREST OF JUSTICES, THIS
IS THE KIND OF THING THAT COULD AFFECT A JURY,
MOST PROBABLY WOULD AFFECT A JURY, WE'RE ASKING
FOR A NEW TRIAL, THE COURT. OKAY. THANK YOU
SEE EXHIBIT "B" PAGE 1, RT EXCERAT 177, LINES 1-7. -
THE COURT: ALL RIGHT. ANY RESPONSE BY THE PEOPLE?
DA. MS. HANNA: -- CIRCUMSTANCES AND THE RESULT OF THE
INCIDENT THAT OCCURED ON (ALLEGEDLY) MARCH 19TH OF
LAST YEAR. WHETHER THE ISSUE -- THE WHOLE QUESTION
OF THE TRIAL IS WHETHER MR. BURTON IS THE PERSON
THAT COMMITTED THE (ALLEGED) CRIME, NOT WHETHER OR
NOT MR. THOMAS IS, IN FACT A VICTIM OF A (ALLEGED) CRIME,
PETITIONER HAVING NO PRIOR CONVICTIONS IS INNOCENT OF

ALL CHARGES. PETITIONER ~~PETITIONER~~ ^{INTERVIEW} WAS DENIED
HIS RIGHT TO MAKE HIS DEFENSE PERSONALLY AS WE KNOW IT,
FIRST BY THE PREJUDICIAL AND ERRONEOUS DENIAL OF HIS
FEDERALLY U.S. CONSTITUTIONAL GUARANTEE BY BOTH THE
SIXTH AND FOURTEENTH DUE PROCESS AND EQUAL PROTECTION
CLAUSES. THE TRIAL COURT PREVENTED DEFENDANT FROM
RAISING ANY OBJECTIONS AND MOTIONS, AND BY FAILING TO RULE ON
PETITIONERS INVOKED 6TH AMENDMENT RIGHT ON 16 MARCH 05
AND OVER REACHING PLACING DEFENDANT FALSELY UNDER
A 1368 HOLD AFTER HE HAD BEEN DETERMINED TO BE LAWFULLY
COMPETENT BY HON JUDGE PRECKEL, THAT SHE ACKNOWLEDGE BEING
AWARE OF IN PREVIOUS PAGES TO THIS PETITION, PETITIONER ALSO
CONTENDS. HON. JUDGE EXARROS ON 01 JUNE 05, PREJUDICIALLY AND
ERRONEOUSLY FAILED TO RULE ON PETITIONERS TIMELY FILED
FARETTA PRO SE MOTION FILED ON 27 MAY 05, AFTER HIS
COMPETENCE HAD BEEN REINSTATED, VIOLATED PETITIONERS 6TH
AND 14TH DUE PROCESS AND EQUAL PROTECTION CLAUSES, AND BOTH
TRIAL JUDGE. HON. HALGREN AND HON. JUDGE EXARROS ABUSED THEIR
DISCRETION IN FAILING TO MAKE THE PROPER WINDHAM INQUIRIES,
SEE NOW EXHIBIT A, PAGE 90, RT EXCERPT 1247 (10-21-05, DAY
OF SENTENCING HEARING - LINES 1-15, -19-24, 28 MR. ADMIRAL
THANK YOU, YOUR HONOR. THE COURT ALL RIGHT, LET ME DEAL FIRST
WITH THE ISSUE OF RELATING TO THE CLAIM OF FARETTA, FIRST
OF ALL, I AM NOT SURE THAT THAT WOULD REALLY APPROPRIATELY
BE GROUNDS FOR A NEW TRIAL MOTION AS OPPOSED TO AN ISSUE FOR
WHICH THERE MAY OR MAY NOT BE AN APPELLATE ISSUE TO RAISE,
BUT IN ANY EVENT, EVEN IF IT WERE AN APPROPRIATE GROUND, I
WOULD BE DENYING IT FOR THE FOLLOWING REASON, THE PAPERWORK

1 WAS SENT BY MR. BURTON TO THE COURT ON EITHER JULY 7TH OR
2 JULY 8TH. BOTH DATES APPEAR ON THE ENVELOPE, THE NEXT
3 COURT HEARING THAT WE HAD AFTER THAT DATE WAS THE
4 DAY OF TRIAL AND IT WAS NOT CALLED TO THE COURT'S
5 ATTENTION THAT THERE WAS ANY PENDING FARETTA ISSUE.
6 -- ANY TIME HE HAD WANTED THE COURT TO RULE ON THE
7 FARETTA MOTION, HE CERTAINLY WOULD HAVE HAD THAT
8 OPPORTUNITY. I WILL NOTE THAT BACK IN MARCH -- MARCH 23RD
9 OF 05, IF I'M RECALLING CORRECTLY -- OR MARCH 24TH
10 DEFENDANT AT THAT TIME HAD REQUESTED A FARETTA
11 MOTION, - AND WE WENT INTO RECESS -- SEE EXHIBIT "A"
12 PAGE 91 R.T. EXCERAT 1248, LINES 2, 3, 5-9, 14-17, 22-26 -
13 THE COURT RULING THAT COUNSEL WAS ADEQUATELY REPRESENTING
14 MR. BURTON -- THE NEXT-RELEVANT FACTUAL BACKGROUND
15 THE COURT MADE AN INCORRECT STATEMENT CONCERNING
16 MARCH 23RD 05, FOR THE FACT IS PETITIONER WAS NOT PRESENT
17 IN COURT ON 23 MARCH 05, SEE EXHIBIT A, PAGE 49 R.T. EXCERAT.
18 0350 STATES "AT 8:45 AM CASE THIS BEING THE TIME SET FOR
19 FURTHER TRIAL BY JURY HAVING BEEN CONTINUED FROM 3-16-05
20 THE PEOPLE ARE PRESENT BY DEPUTY DISTRICT ATTORNEY MARIA HANNAH
21 PRIVATE CONFLICT COUNSEL CHARLES ADAIR REPRESENTS DEFENDANT
22 "WHO IS NOT PRESENT". THE COURT INFORMS BOTH ATTORNEYS THAT
23 THE DEFENDANT IS IN THE HOSPITAL AND WILL NOT BE BROUGHT
24 BY THE JAIL THIS MORNING FOR TODAY. -- 11:27 AM COURT IS AGAIN
25 IN SESSION WITH ALL PARTIES PRESENT AS PREVIOUSLY NOTED.
26 THE COURT INFORMS THE ATTORNEYS THAT THE JAIL HAS INDICATED
27 THE DEFENDANT WILL NOT BE TRANSPORTED TODAY THE TRIAL IS
28 TRAILED TO MARCH 24, 2005 AT 9:00 AM IN DEPARTMENT 10. ATTORNEY

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1 ADAIR INFORMS THE COURT THAT HE WILL BE MAKING A
2 MOTION PURSUANT TO PC 1368 AND THE DEFENDANT MAY REQUEST
3 A MARSDEN HEARING; 11:32 AM COURT IS ADJOURNED, SEE
4 EXHIBIT "A" PAGE 0351, RT EXCERPT SO THE DEFENDANT REQUEST
5 A MARSDEN MOTION AND A FARETTA MOTION. ATTORNEY ADAIR
6 ("THEN") REQUEST MOTION PURSUANT TO PC 1368. DEPUTY
7 DISTRICT ATTORNEY MARIA HANNAH, OBJECTS, TO THE MOTIONS.
8 -- THE COURT DENIES THE REQUEST FOR THE MARSDEN MOTION
9 NOW SEE EXHIBIT "A" PAGE 51 RT EXCERPT. 210 LINES 1-4,
10 6-20, 22-28, STATES, "SAN DIEGO, CALIFORNIA; THURSDAY MARCH 24, 2005
11 9:10 AM. THE COURT: THIS IS PEOPLE VERSUS BURTON, COUNSEL
12 AND DEFENDANT ARE PRESENT. -- BUT FIRST I NEED TO -- WE
13 NEED TO PUT A FEW THINGS ON THE RECORD. BASED UPON
14 COMMUNICATIONS WITH THE JAIL YESTERDAY, THE COURT WAS
15 INFORMED THAT THERE WERE MEDICAL ISSUES THAT NEEDED
16 TO BE ADDRESSED FOR MR. BURTON, AND SO BECAUSE OF THOSE
17 MEDICAL ISSUES AND EVALUATIONS BY DOCTORS, HE WAS WASN'T
18 ABLE TO BE TRANSPORTED, SO I NEED TO KNOW IF THERE'S ANYTHING
19 FURTHER THAT NEEDS TO BE PUT ON THE RECORD REGARDING
20 THAT. ANY NEW INFORMATION OR ANYTHING ADDITIONAL THAT'S
21 BEEN DETERMINED? MR. ADAIR; I'M NOT AWARE OF ANYTHING,
22 YOUR HONOR. THE COURT: ALL RIGHT. AND MR. BURTON IS
23 HERE TODAY -- AND SO WE NEED TO PROCEED. -- I NEED TO
24 KNOW WHAT OTHER MOTIONS ARE GOING TO BE HEARD, MR. ADAIR,
25 THE DEFENDANT: FARETTA (PROSE), THE COURT ALL RIGHT, "FARETTA
26 (PROSE) MOTION AND MARSDEN." MR. ADAIR: AS I INFORMED YOU
27 YESTERDAY, I HAVE A SERIOUS QUESTION AS TO WHETHER OR NOT
28 MR. BURTON IS ABLE TO ASSIST IN A RATIONAL MANNER AT THIS TIME.

Mr. E. D. Burton # 10020
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1 SEE EXHIBIT "A" PAGE 52, RT EXCERPT 211, LINES 1-5, 16-28.
2 THE DEFENDANT: OBJECTION, YOUR HONOR. THE COURT: WELL, MR BURTON,
3 I'M GOING TO HEAR FROM MR. ADAIR FIRST, -- STATE THAT FOR
4 THE RECORD -- MR. ADAIR, -- BECAUSE HE NEEDS TO
5 COOPERATE IN HIS DEFENSE. AND IF HE'S NOT ABLE TO DO THAT,
6 HE'S GOING TO BE VERY HANDICAPPED, AND SO I'M MAKING
7 A MOTION UNDER 1367/1368 OF THE PENAL CODE. BECAUSE LIKE
8 I SAID, I HAVE A SERIOUS QUESTION ABOUT HIS ABILITY
9 TO COOPERATE IN A RATIONAL MANNER OR HIS CAPACITY TO
10 COOPERATE AT THIS TIME. THE COURT: ALL RIGHT, LET ME
11 MAKE A FEW INQUIRIES. WHEN WE WERE IN COURT LAST WEEK,
12 WE HAD PROBABLY ABOUT A 45-MINUTE MARSDEN HEARING, AND
13 AT THAT POINT THERE WERE DEFINETELY DISAGREEMENTS
14 BETWEEN MR. BURTON AND YOURSELF AS TO HOW THE CASE
15 WAS BEING CONDUCTED, BUT AT THAT POINT YOU DID NOT
16 RAISE THE MOTION ON COMPETENCY. SEE EXHIBIT "A" PAGE 53,
17 RT. EXCERPT 212, LINES 15-20. MR. ADAIR: -- SINCE MR. BURTON
18 AND I DISAGREE, HE NEEDS AND EXAMINATION. THE COURT: ALL
19 RIGHT. DO THE PEOPLE HAVE ANY INPUT ON THIS ISSUE?
20 MS. HANNAH: I DO, YOUR HONOR, PEOPLE ARE OPPOSED TO A 1368
21 VIA 1367 AT THIS TIME. SEE EXHIBIT "A" PAGE 55, RT. EXCERPT 214
22 LINES 1-6, 9, 10, 12, 13, 22-26. THE COURT: ALL RIGHT. THANK YOU.
23 MR. ADAIR: COULD I RESPOND, YOUR HONOR? THE COURT: YES, MR. ADAIR,
24 YOUR HONOR, I'M, LIKE, THE FOURTH ATTORNEY ON THE CASE. TWO
25 OF THEM WERE RELIEVED DUE TO CONFLICT OF INTEREST -- THERE
26 BEEN PROBLEMS WITH MR. BURTON FROM THE BEGINNING, BUT
27 NOTHING -- IT'S NOT SOMETHING MR. BURTON IS ASKING FOR. IT'S
28 SOMETHING I'M ASKING FOR. THE COURT: ALL RIGHT. THANK YOU

MR. E. W. BURTON FOR
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1 (THE COURT) - LET'S SEE, MR. BURTON, YOU HAD RAISED AN OBJECTION.
2 ARE YOU OBJECTING TO YOUR COUNSEL'S MOTION? THE DEFENDANT
3 I WOULD LIKE AN ATTORNEY TO REPRESENT ME FOR THIS
4 MARDEN. I HAVE A CONFLICT OF INTEREST. SEE EXHIBIT "A",
5 PAGE 56, R. EXCERPT 215, LINES 2-24, ALSO SEE EXHIBIT "A" PAGE
6 57, R. EXCERPT 216, LINES 1, 2, 6-8, 13-22. (THE DEFENDANT)
7 I'VE BROUGHT INFORMATION WITH ME TO SUPPORT A CONFLICT
8 OF INTEREST, AND I WOULD LIKE TO CONDUCT MY MARDEN
9 AND HAVE A FEW MOMENTS TO CONSORT WITH THE ATTORNEY -
10 THAT I'D LIKE TO ASK THE COURT HAVE AN ATTORNEY
11 ASSIST ME WITH THIS MARDEN, BECAUSE MR. ADAIR IS --
12 HE INTIMIDATES ME WITH HIS KNOWLEDGE AND HIS EXPERIENCE.
13 THE COURT, WELL, I'M NOT GOING TO HEAR A MARDEN
14 RIGHT NOW BECAUSE BASED ON WHAT YOUR COUNSEL HAS
15 TOLD ME, I BELIEVE HE HAS LAID A SUFFICIENT EVIDENTIARY
16 BASIS TO RAISE A SUBSTANTIAL DOUBT AS TO WHETHER YOU'RE
17 COMPETENT, AND I DON'T SEE THAT. -- THERE ARE THREE CRITERIA
18 I NEED TO LOOK AT. I THINK YOU'RE CAPABLE OF UNDERSTANDING
19 THE NATURE OF THESE PROCEEDINGS AND YOU UNDERSTAND YOUR
20 STATUS IN RELATIONSHIP TO THESE PROCEEDINGS, BUT I AM
21 CONCERNED AS TO WHETHER YOU ARE ABLE TO ASSIST YOUR
22 ATTORNEY IN A RATIONAL MANNER, AND THAT'S A PARTICULAR
23 CONCERN BECAUSE YOU HAVE RAISED "THE ISSUE OF A FARETTA
24 MOTION, AND THE STANDARDS THAT THE COURT WOULD USE TO
25 EVALUATE WHETHER YOU'RE COMPETENT TO REPRESENT YOURSELF
26 ARE THE SAME STANDARDS THAT ARE CONSIDERED IN DETERMINING
27 WHETHER YOU'RE MENTALLY COMPETENT TO ASSIST YOUR ATTORNEY,
28 AND SO I BELIEVE THAT THE ASSISTANCE OF A MEDICAL EXPERT

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1 WOULD HELP THE COURT IN MAKING THAT DETERMINATION.
2 IF IT'S DETERMINED THAT YOU'RE COMPETENT, THEN YOU ARE
3 CERTAINLY FREE TO RAISE A MARSDEN OR A FARETTA MOTION
4 OR WHATEVER ELSE YOU THINK IS APPROPRIATE, AND THEN THE
5 COURT AT THAT TIME WILL -- (SEE EXHIBIT "A" PAGE 57, R.T. EXCERPT
6 216, LINES 1, 2, 6-8, 13-22) -- EVALUATE IT. BUT I THINK IT
7 WOULD BE PREMATURE FOR ME TO HEAR THAT MOTION NOW,
8 UNTIL WE ESTABLISH YOUR COMPETENCY -- AND I ^{DO} AGREE. I
9 BELIEVE THAT IN OUR FIRST CHAMBERS CONFERENCE BETWEEN
10 COUNSEL AND THE COURT BEFORE WE STARTED THIS TRIAL, MR.
11 ADAIR HAD MENTIONED HIS CONCERNS, -- I THINK THAT I AM GOING
12 TO RELY ON HIS JUDGEMENT, PARTICULARLY BASED ON HIS EXPERIENCE
13 AND ALL OF THE STATEMENTS HE PUT ON THE RECORD DURING THE
14 MARS DEN HEARING RELATING TO HIS EXPERIENCE AS COUNSEL,
15 WHICH IS VAST, AND HE HAS DEALT IN MANY CASES -- MANY SERIOUS
16 CASES OVER THE YEARS AND I AGREE. -- SIMPLY BECAUSE HE
17 DISAGREES WITH THE STRATEGY OF THE DEFENDANT, THAT HE WOULD
18 BRING THIS MOTION. SEE EXHIBIT "A" PAGE 97, R.T. EXCERPT 17, LINES 1-9,
19 6, 7, 17-19 (11-05-04 MARS DEN HEARING THE HON. JUDGE PRECKEL PRESIDING).
20 THE COURT: MR. BURTON, IF I GRANT YOUR REQUEST -- AND LET ME SAY
21 PARENTHETICALLY YOU'RE, IN MY VIEW, VERY WELL SPOKEN. YOU'VE
22 OBVIOUSLY DONE SOME READING -- AND YOU'VE BEEN THROWING
23 AROUND THE MAJORITY OF THE AMENDMENTS IN THE BILL OF RIGHTS
24 AND A FEW OTHERS TO BOOT. -- IT'S THE ATTORNEYS JOB TO
25 REPRESENT YOU AND TO ADVOCATE YOUR POSITION AND PROTECT
26 YOUR RIGHTS AND INTEREST, SEE EXHIBIT "A" PAGE 96, R.T. EXCERPT 0127
27 A TIMELY FILED FARETTA PRO SE MOTION, INDICATIVE BY THE ARROW. --
28 FARETTA PRO SE, THAT WAS NEVER RULED ON. SEE NOW EXHIBIT "A" PAGE 21, R.T.

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EXCEPT 21, LINES 1-18 (MANSDEN HEARING 11-05-04 THE HON. JUDGE PRECKEL PRESIDING) THE COURT: PHYSICAL EVALUATION OF YOU. IF WHAT YOU'RE TELLING ME IS THAT YOU HAVE A DOUBT ABOUT YOUR PRESENT MENTAL COMPETENCE TO PROCEED WITHIN THE MEANING OF PENAL CODE SECTION 136B, ET SEQUITUR, I REJECT THAT SUGGESTION OUTRIGHT BASED UPON MY INTERACTION WITH YOU HERE THIS AFTERNOON. I CANNOT GET INSIDE YOUR HEAD IN A MANNER OF SPEAKING, BUT CLEARLY THE MANNER WHICH YOU HAVE PRESENTED HERE THIS AFTERNOON, THE MANNER IN WHICH YOU HAVE COGENTLY AND LOGICALLY SPOKEN AT LENGTH CONCERNING YOUR CASE, ALL OF THAT CAUSES THE COURT TO CONCLUDE THAT YOU'RE ABSOLUTELY COMPETENT, AS A MATTER OF LAW, AT THIS TIME SUCH THAT ^uTHESE CRIMINAL PROCEEDINGS^u WILL GO FORTH WITHOUT UNDUE INTERRUPTION FOR PURPOSES OF A 136B EXAMINATION EVALUATION AND HEARING. I FIND NOT EVEN A SCINTILLA OF EVIDENCE AS TO SUPPORT OR WARRANT THE SUSPENSION OF CRIMINAL PROCEEDINGS IN THIS CASE. SO LET'S RETURN TO WHAT WE WERE ADDRESSING HERETOFORE, MR. BURTON, AND THAT BEING IF THE COURT APPOINTS NEW COUNSEL TO REPRESENT YOU. SEE EXHIBIT "A" PAGE 9, R, EXCEPT 22 LINES 1, 2, 16-23. THE COURT: THIS TIME WILL RELIEVE MR. PLUMMER AS APPOINTED COUNSEL OF RECORD FOR MR. BURTON--THE CLERK WILL PROMPTLY NOTIFY P.C.C. THIS AFTERNOON OF THE NEED FOR A NEW CATEGORY 5 OR LEVEL 5 ATTORNEY FOR MR. BURTON, WITH THAT ATTORNEY TO PRESENT AS WELL AT 8:30 IN THE MORNING ON TUES DAY, NOVEMBER 9TH. ALL RIGHT--MR PLUMMER, THANK YOU, MR. BURTON. THANK YOU FOR THE MANNER WHICH YOU HAVE PRESENTED YOUR CAUSE TO THE COURT.

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THIS AFTERNOON. SEE EXHIBIT "A" PAGE 11, RT EXCERPT 11, LINES 20-24,
27, AND 28. THE DEFENDANT (11-05-04) I HAVE INEFFECTIVE COUNSEL,
AND THE CONSTITUTION OF THE UNITED STATES, OF THE 6TH AMENDMENT
GUARANTEES ME THE RIGHT TO HAVE EFFECTIVE COUNSEL, AND
BEING CHARGED WITH A FELONY AND SO SAID THAT I AM:-- EVERY
LEVEL OF THESE PROCEEDINGS AND TRIAL. -- COUNSEL AS GUARANTEED
BY MY RIGHTS AS THE ACCUSED BY THE CONSTITUTION OF THE UNITED
STATES. STATEMENT OF RELEVANT FACTS PETITIONER NEVER HAD
PERSONAL CONSULTATION WITH HIS FIRST COURT APPOINTED COUNSEL VICK
ERICSEN; THE COURT HAD APPOINTED CONFLICTING COUNSEL NEWTON
AFTER MR. PLUMMER WAS RELIEVED. SEE EXHIBIT "A" PAGE 22 RT EXCERPT
186 LINES 12, 13, 14, 19, 20, 21, 23, ALSO SEE EXHIBIT "A" PAGE 23 RT EXCERPT 187
LINES 1-2. THE COURT: (16 MARCH 05) HOW MANY ATTORNEYS HAVE YOU HAD
THE DEFENDANT: -- ONE WAS MR. NEWTON, -- AND SO IT WAS A CONFLICT.
BECAUSE -- HIMSELF DUE TO CONFLICT OF INTEREST. THE COURT: WAS
MR. PLUMMER RELIEVED BASED UPON A MOTION YOU MADE? THE DEFENDANT: --
BECAUSE MR. -- THE COURT. SO THEN AFTER MR. PLUMMER, MR. NEWTON,
WHO DID YOU HAVE NEXT? THE DEFENDANT: -- THE FIRST ONE WAS MR.
VIC ERICSEN, BUT I NEVER MET WITH HIM. -- HE HAD A CONFLICT OF
INTEREST BECAUSE HE REPRESENTED MR. THOMAS IN THE PAST. THEN
THERE WAS MR. PLUMMER, THEN THERE WAS MR. NEWTON AND THEN THERE
WAS MR. ADAIR. THE COURT: ALL RIGHT, SEE EXHIBIT "A" PAGE 19 RT
EXCERPT 183, LINES 19-21. THE COURT: OKAY NOW -- TELL ME SOMETHING
ELSE BEYOND THIS VIOLATION OF ATTORNEY/CLIENT PRIVILEGE, SEE
EXHIBIT "A" PAGE 27, RT EXCERPT 191 LINES 2, 3, 4, 7, 8, 9, THE DEFENDANT,
MY POINT IS I HAD ALREADY EXPRESSED, AS FAR AS MY RIGHTS
TO REFUSE, THE COURT: I DON'T NEED YOU TO REARGUE THE MOTION.
THE DEFENDANT: YES MA'AM. MR. ADAIR: IT LOOKS LIKE 5 JANUARY (05) YOUR HONOR.

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1 THE COURT: ALL RIGHT. SEE NOW EXHIBIT "A", PAGE 58, RT EXCERPT,
2 217, LINES 4-6, 19-28, SEE ALSO EXHIBIT "A" PAGE 59, RT EXCERPT-
3 218/250, LINES 1, 2, 3, 4, 7-12, 15, 18.

4 THE COURT: SO I'M GOING TO SUSPEND PROCEEDINGS
5 SO THAT WE CAN HAVE THE EVALUATION UNDER PENAL CODE
6 SECTION 1366. MY CLERK WILL BE SETTING -- OR CONTACTING
7 THE DOCTORS. ~~DO I NEED TO -- I DON'T APPARENTLY~~ ~~APPROPRIATE~~

8 THE COURT: ALL RIGHT, BACK ON THE RECORD.

9 AND MR. BURTON, JUST SO YOU UNDERSTAND HOW THIS WILL
10 PROCEED, -- I'M ORDERING A SPECIAL HEARING IN WHICH A
11 DETERMINATION WILL BE MADE ABOUT YOUR ABILITY TO STAND
12 TRIAL. AND IF YOU ARE FOUND MENTALLY ABLE TO DO SO, THEN
13 THE CRIMINAL PROCEEDINGS WILL CONTINUE IF YOU'RE FOUND
14 MENTALLY INCOMPETENT TO STAND TRIAL, YOU'RE REPLACED IN
15 THE HOSPITAL OR OTHER SUITABLE FACILITY UNTIL SUCH
16 TIME AS YOU ARE ABLE TO STAND TRIAL. -- MR. ADAIR, DO I
17 NEED TO ADVISE HIM OF HIS CONSTITUTIONAL STATUTORY
18 RIGHTS ON THE RECORD? MR. ADAIR: NO, YOUR HONOR,

19 THE COURT: ALL RIGHT. THE CLERK: THE EXAMINATION DATE
20 WILL BE APRIL 8TH, 05 AT 8 AM IN ROOM 1003, HEARING DATE WILL BE 4-
21 27-05, 9 AM. DEPARTMENT 57. THE COURT: THEN IS THERE ANYTHING
22 ELSE THAT NEEDS TO BE PLACED ON THE RECORD BEFORE WE ARE
23 IN RECESS? ALL RIGHT. WE ARE IN RECESS. MS HANNAH: OKAY.
24 CAT 9:30 AM, THE PROCEEDINGS WERE ADJOURNED. NOW SEE
25 EXHIBIT "A" PAGE 61 RT EXCERPT 0121 (FARETTA PRO SE MOTION) STIPULATED, ON
26 FACE ONLY, FILE STAMPED MAY 27, 2005, PETITIONER'S COMPETENCE
27 WAS REESTABLISHED ON 23 MAY 05 BY JUDGE KRAUL. SEE ARROW AND WORD
28 HERE INDICATING, FARETTA PRO SE, THAT WAS NEVER RULED ON.

MR. E. BURTON # 720
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1 SEE EXHIBIT "A" PAGE 62, RT EXCERPT 251; LINES 14-120 STATES "ELCOW
2 CALIFORNIA, WEDNESDAY, JUNE 1, 2005. THE COURT: PEOPLE VERSUS ERIC
3 BURTON. MR. ADAIR: GOOD AFTER NOON, CHARLES ADAIR FOR
4 MR. BURTON, WHO IS PRESENT BEFORE THE COURT. THE COURT: THE
5 DEFENDANT IS BEFORE THE COURT FOR CRIMINAL PROCEEDINGS,
6 HAVING BEEN REINSTATED, AND IT'S A MATTER OF GETTING THE
7 MATTER FOR TRIAL AND READINESS, CORRECT, MR. ADAIR; THAT'S
8 CORRECT, YOUR HONOR. MR. BURTON ALSO WANTED TO BRING
9 A MARS DEN MOTION. THE COURT: ARE YOU APPOINTED, MR. ADAIR?
10 MR. ADAIR: YES, I WAS, YOUR HONOR. THE COURT: OKAY, ALL RIGHT.
11 "I'VE GOT THIS HANDWRITTEN MOTION HERE" (FARRETTA PRO SE 1995)
12 --WE WILL DEAL WITH THE MARS DEN MOTION AT THIS TIME.
13 SO WE WILL CLEAR THE COURTROOM AND PROCEED WITH THAT
14 HEARING--SEE EXHIBIT "A" PAGE 63, RT EXCERPT 252, LINES
15 7-11, 16-19, 26, 27, 28, ALSO SEE EXHIBIT "A" PAGE 64, RT EXCERPT
16 253 LINES 1, 2, 3, 4, 6, 11, 20, 23, 24. THE COURT: MR. BURTON, YOU HAVE
17 INDICATED THAT IT IS YOUR DESIRE TO DISCHARGE MR. ADAIR AS YOUR
18 ATTORNEY OF RECORD; IS THAT CORRECT? THE DEFENDANT: THAT IS CORRECT,
19 SIR. THE COURT: ALL RIGHT. -- WHY DO YOU THINK HE SHOULD BE
20 DISCHARGED AS YOUR ATTORNEY OF RECORD? THE DEFENDANT: I HAVE
21 RECKLESS MISREPRESENTATION--CONFLICT OF INTEREST. PERTAINING
22 TO MY SIXTH AMENDMENT RIGHTS, FROM WHAT I UNDERSTAND, NO ONE
23 CAN PREVENT A CLIENT FROM HAVING CONTACT WITH HIS ATTORNEY
24 ALSO, I HAVE SOME MOTIONS AND SOME PAPERS HERE. THE COURT: WE'RE
25 NOT GOING TO GO INTO THE MOTION HERE, MR. BURTON. (THE COURT) WE WILL
26 ONLY DEAL WITH THE MARS DEN HEARING AT THIS TIME--(SEE BRIEFLY EXHIBIT "A"
27 PAGE 3, RT EXCERPT 203, LINE 12, 3. MR. ADAIR (16 MARCH 05)-- I DIDN'T BELIEVE
28 HE COULD WIN HIS CASE. THE COURT: ALL RIGHT. WELL,) (SEE ALSO EXHIBIT "A"

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PAGE 69, RT EXCEPT 204, LINES 17-20, 22, 24, 25, 26, 27, 28) (THE COURT:--
IMPOSSIBLE FOR MR. ADAIR TO EFFECTIVELY REPRESENT MR. BURTON
TO THE EXTENT THERE HAVE BEEN ANY DIFFICULTIES, IT SEEMS LIKE
SOME OF THEM HAVE BEEN CAUSED BY MR. BURTON NOT EITHER
WANTING TO SIGN CONSENT FORMS OR MAKING IT MORE DIFFICULT--
PREFER TO HAVE FACE-TO-FACE MEETINGS WITH HIS ATTORNEYS--
IT'S MORE EFFICIENT TO COMMUNICATE IN WRITING OR HAVE ANOTHER
COME ON YOUR ATTORNEY'S BEHALF. SO I DON'T THINK THAT'S A
BASIS TO CONCLUDE THAT THERE IS NOT EFFECTIVE REPRESENTATION. SO
THE MARSDEN MOTION IS DENIED) (HON. JUDGE HALGREN 16 MARCH 05)
SEE EXHIBIT "A" PAGE 68, RT EXCEPT 257, LINES 8-11, 20-28, SEE ALSO EXHIBIT
PAGE 69, RT EXCEPT 258, LINES 5, 6, 7, 8, 9, 10, 11, 12, 15, 16, THE DEFENDANT, ON
THE RECORD, BEFORE I CALLED MY MARSDEN (REFERRING TO 16 MARCH 05), I
STATED MY INTENTION TO GO PRO PER AT THAT TIME PER MY SIXTH AMENDMENT
RIGHTS, AND I BELIEVE THE COURT ERRORED IN DENYING ME MY RIGHT
TO GO PRO PER. -- JUDGE PRECKEL STATED (11-05-04) THAT HE FOUND
ME COMPETENT, FROM MY UNDERSTANDING, IF A DEFENDANT IS
COMPETENT AND HE HAS MADE A TIMELY MOTION TO GO PRO PER,
HE HAS THAT RIGHT TO DO SO. I MADE A TIMELY MOTION TO GO
PRO PER AND I BEGAN TO EXPLAIN THAT TO THE JUDGE / HON JUDGE HALGREN
BUT I WAS, I FELT THE COURT AND MR. ADAIR WERE OVERREA-
CHING AND PLACED ME UNDER A 1368 HOLD AND ORDERED ME TO
UNDERGO A COMPETENCY HEARING. SEE NOW EXHIBIT 'A' PAGE 69, RT
EXCEPT 258. -- HOWEVER, I WAS FOUND COMPETENT. I FELT THAT
THE COURT ERRORED AND VIOLATED MY SIXTH AMENDMENT RIGHTS, THE
JUDGE ALSO VIOLATED MY 14TH RIGHTS TO DUE PROCESS, AND WHEN YOUR
DUE PROCESS IS VIOLATED, FROM MY UNDERSTANDING, I'D LIKE TO
MOTION THE COURT TO RELEASE ME FROM CUSTODY, I HAVE BEEN

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1 UNLAWFULLY DETAINED, THE COURT: NOW, MR. BURTON --
2 WERE NOT HERE ON UNLAWFUL DETENTION OR PROPER
3 RIGHTS, THE COURT OKAY. ALL RIGHT.

4 SEE EXHIBIT "A" PAGE 75, RT EXCERPT 265 LINES 9, 10, 12, 13, 15, 16, 20, 21,
5 22, SEE ALSO EXHIBIT "A" PAGE 76, RT EXCERPT 266, LINES 3-7, 16, 17,
6 21, 22, 25-28, SEE ALSO EXHIBIT "A" PAGE 77, RT EXCERPT 267, LINES 1-3
7 9-10, 18-25. THE DEFENDANT: MY POINT IS, YOUR HONOR, THAT I'M
8 INNOCENT OF ALL CHARGES. THE COURT: OKAY FINE, NOW, STOP.

9 MR. ADAIR IS OBLIGATED TO COMMUNICATE WITH -- ALSO OBLIGATED
10 TO GIVE YOU THE BENEFIT OF HIS PROFESSIONAL OPINION -- YOU
11 HAVE CHOSEN TO PLEAD NOT GUILTY AND MAINTAIN YOUR INNOCENCE.
12 SO YOU HAVE THE ABSOLUTE RIGHT TO DO SO, THE COURT.

13 ANYTHING FURTHER, MR. BURTON? THE DEFENDANT: THE PROBLEM IS,
14 SIR, THAT I WAS UNLAWFULLY ARRESTED AND DETAINED. THE COURT:
15 "I DON'T WANT TO GO INTO THE FACTS OF THE CASE. --

16 THERE IS NO BASIS TO DISCHARGE MR ADAIR AT THIS TIME --
17 YOUR MOTION TO DISCHARGE HIM AS YOUR ATTORNEY OF RECORD
18 IS DENIED. -- "NOW, WE WILL BE OPEN AGAIN TO THE

19 DISTRICT ATTORNEY." "WE ARE AGAIN IN SESSION, PRESENT
20 IS THE DISTRICT ATTORNEY, MR. TROCHA." (6-01-05) THE
21 PURPOSE OF THE HEARING NOW IS TO SET A TRIAL DATE AFTER

22 CRIMINAL PROCEEDINGS HAVE BEEN REIN STATED. THE TRIAL DATE
23 WILL BE ON MONDAY, JULY 11TH, IS THAT DATE GOOD FOR YOU, -- MR. ADAIR
24 WHETHER OR NOT YOU WANT TO ASSIGN IT BACK TO HER. (MEANING HON. JUDGE HALCHEN)

25 MR ADAIR: HE'D PREFER NOT TO WAIVE TIME. THE COURT: ALL RIGHT, YOU STILL
26 WANT IT ON THE 19TH MR. ADAIR? MR. ADAIR: YES SIR, THE COURT: WITH

27 THREE DAYS REMAINING MR. ADAIR: YES SIR, THE COURT: TUESDAY, JULY 19TH, 9:00 AM
28 AM IN THIS DEPARTMENT

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1 SEE EXHIBIT A PAGE 77, RT. EXCERPT 267, LINES 26-28, AND ALSO
2 EXHIBIT A, PAGE 78, RT. EXCERPT 268 LINES, ~~4, 6, 7, 8, 10~~ ENVELOPES 1, 6, 7,
3 14. MR. ADAIR: ALSO, THERE MAY BE, AS WE DISCUSSED,
4 THERE MAY BE SOME RECORDS THAT I HANDED TO THE COURT
5 PURSUANT TO SUBPOENA, IF THOSE COULD BE RELEASED TO
6 ME? THE COURT: WHO ARE THEY FROM? MR. ADAIR: THEY'RE
7 MR. BURTON'S MEDICAL RECORDS, MR. TROCHA: THEY'RE THE
8 (ALLEGED) VICTIMS POLICE RECORDS. SEE EXHIBIT A, PAGE 108,
9 RT. EXCERPT 0139, LINES 1-28 (THE DEFENDANT'S ARGUMENT IN
10 MOTION SENT TO COURT. STATEMENT OF RELEVANT FACTUAL
11 BACKGROUND, CLEARLY THE TRIAL COURT ERRED, PREJUDICIALLY
12 BY OVERREACHING AND PLACING PETITIONER ON A 136B HOLD,
13 AFTER HE HAD ALREADY BEEN DEEMED LAWFULLY COMPETENT 11-05-04.
14 ON 16 MARCH 05, THEN ERRORED ON 24 MARCH 05, AS PETITIONER
15 MADE HIS FARETTA PRO SE MOTION TO COURT TIMELY AND AN
16 INQUIRY SHOULD HAVE BEEN MADE, COUNSEL SHOULD HAVE BEEN
17 APPOINTED TO ASSIST DEFENDANT FOR HIS MARS DEN, ON
18 6-01-05 AFTER PETITIONER'S COMPETENCE HAD BEEN REESTABLISHED.
19 THE COURT PREJUDICIALLY ERRORED IN FAILING TO RULE ON
20 PETITIONER'S FARETTA PRO SE/995 MOTION WHEN PROSECUTOR
21 MR. TROCHA WAS PRESENT ON RECORD, TRIAL COURT HON.
22 JUDGE HALGREN AND HON. JUDGE EXARHOS ABUSED THEIR DISCRETION
23 IN FAILING TO RULE ON APPROX 3 TIMELY MOTIONS FOR
24 SELF REPRESENTATION BY RECORDS OF EXCERPTS. PETITIONER'S
25 6TH AND 14TH AMENDMENT DUE PROCESS CLAUSES AND EQUAL
26 PROTECTION CLAUSES WERE VIOLATED BY THE TRIAL COURT.
27 AS COURT MISSTATES THE FACTS CONCERNING PETITIONER'S
28 TIMELY ASSERTED RIGHTS TO SELF REPRESENTATION, A, PER SE

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REVERSAL IS WARRANTED.

AS THE EXCERPT'S SHOW PETITIONER WAS LITERATE
COMPETENT, AND RATIONAL, IT WAS PREJUDICIAL
REVERSIBLE ERROR, AND AN ABUSE OF DISCRETION TO DENY
PETITIONERS U.S. CONST. 6TH AND 14TH AMENDMENT RIGHT AS
WELL AS THE HON. JUDGE PRECKEL INDICATED THE BILL OF RIGHTS.
TO SELF REPRESENTATION, AND TO MAKE A DEFENSE AS WE
KNOW IT, TO DEFEND HIMSELF PERSONALLY, AS DEFENSE
COUNSEL ADAIR ARGUED AT SENTENCING AND INQUIRY
SHOULD HAVE BEEN MADE INTO DEFENDANTS TIMELY
FILED FARETTA PRO SE MOTION, AS THE COURT IN
ESSENCE GAVE COUNSEL LEAVE TO MOTION THE
COURT AT THE RIGHT TIME. THE TRIAL COURT ABUSED
IT'S DISCRETION IN FAILING TO RULE ON PETITIONER'S TIMELY
FILED FARETTA PRO SE "MOTIONS" IN COURT FILE ON 27 MAY 05,
AND 07 JULY 05 / 08 JULY 05, SEE EXHIBIT "A" PAGE 81 P EXCERPT,
0358 (1795) LINES, AT 10:00 AM. STATES' COURT IS AGAIN IN SESSION WITH ALL
PARTIES PRESENT AS NOTED PREVIOUSLY, ATTORNEY ADAIR REQUEST THAT THE
MOTIONS THE DEFENDENT PREVIOUSLY FILED, WITHOUT THE KNOWLEDGE OF
ATTORNEY ADAIR BE ACCEPTED, THE MOTION IS DENIED. SEE EXHIBIT "A"
PAGE 82, R. EXCERPT 753, DATED 7/22/05, APPROXIMATELY 3RD DAY OF TRIAL,
LINES 5-16. THE COURT: LET'S GO ON THE RECORD BEFORE WE
BRING IN THE JURY. I HAVE ANOTHER DOCUMENT THAT MR. BURTON
HAD SENT TO THE COURT. IT WAS ROUTED THROUGH DEPARTMENT 7,
I BELIEVE, BUT IT APPEARS TO BE ANOTHER "PRETRIAL" OR
TRIAL MOTION THAT HE HAD WANTED THE COURT TO "CONSIDER".
I'LL GIVE THAT TO MR. ADAIR. IF HE THINKS IT HASN'T BEEN
ADDRESSED AND HE WISHES TO ADDRESS THAT, [HE CAN DO

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1 SO AT THE RIGHT TIME] MR. ADAIR: THANK YOU, YOUR HONOR.
2 THE COURT: I THINK AT THIS TIME WE'RE READY TO BRING THE
3 JURY IN. SEE EXHIBIT "A" PAGE 83, RT. EXCERPT 0364, DATED 7-24-05
4 AT 10:51 AM. STATE'S COURT IS AGAIN IN SESSION WITH ALL COUNSEL
5 AS PREVIOUSLY NOTED, THE DEFENDANT, THE INVESTIGATING OFFICER,
6 THE COURT PROVIDES ATTORNEY ADAIR WITH A MOTION THAT THE
7 DEFENDANT HAD SENT TO THE COURT AND STATES THAT [ALL] MOTIONS
8 NEED TO BE SUBMITTED THROUGH ATTORNEY ADAIR.
9 SEE EXHIBIT "A" PAGE 85, RT. EXCERPT 1242, LINES 8-10, 12-16. MR. ADAIR: FINE.
10 THANK YOU, YOUR HONOR. YOUR HONOR (DAY OF SENTENCING 21 OCT. 05), THE FIRST
11 ISSUE, I BELIEVE, AS RAISED IN OUR PAPERS ARE MR. BURTON'S FARETTA
12 MOTION, -- HE HAD MAILED IT TO THE COURT AND IT HAD BEEN FILED
13 APPARENTLY ON OR ABOUT JULY 7TH OF THIS YEAR BEFORE TRIAL
14 STARTED. ~~AND I BELIEVE TRIAL STARTED ON JULY 14TH~~ --
15 AND IT'S OUR CONTENTION THAT, THAT NEEDED TO BE RULED ON.
16 SEE EXHIBIT "A" PAGE 87, RT. EXCERPT 1243, LINES 14; 16, 18-27
17 MR. ADAIR: THE SITUATION REALLY WOULD GIVE RISE TO A -- A QUESTION,
18 -- FOR ALL OF THOSE REASONS AND PARTICULARLY THE REASONS THAT
19 IT IS IN THE INTEREST OF JUSTICE, THIS IS THE KIND OF THING THAT
20 COULD AFFECT A JURY, MOST PROBABLY WOULD AFFECT A JURY,
21 WE'RE ASKING FOR A NEW TRIAL. THE COURT: OKAY. THANK YOU
22 MR. TROCHA WOULD YOU CARE TO RESPONSE? MR. TROCHA: YES,
23 YOUR HONOR. FIRST, AS TO THE FARETTA ISSUE, I DON'T RECALL
24 MR. BURTON BEFORE TRIAL -- SEE EXHIBIT A, PAGE 60, PAGE 64,
25 RT. EXCERPT 0121, PETITIONER STIPULATES TO THE FACE OF THE
26 MOTION ONLY, DENIES ALL OTHER PAGES. SEE BELOW LINE 26,
27 INDICATED BY ARROW AND WORD "HERE" e.g. FARETTA PRO SEC HERE --
28 NOW SEE EXHIBIT "A", PAGE 62, R.T. EXCERPT 251 LINE 16, 17. THE COURT: --

Mr. E. W. BURTON, AFB
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1 (THE COURT:) OKAY (HON JUDGE EXARHOS - 6-01-05) ALL RIGHT. I'VE GOT THIS
2 HANDWRITTEN MOTION HERE, SEE EXHIBIT A, PAGE 64, RT. EXCERPT 253 LINES 1, 2, 4, &
3 THE DEFENDANT; ALSO, I HAVE SOME MOTIONS AND SOME PAPERS HERE, THE COURT;
4 WE'RE NOT GOING TO GO INTO THE MOTION HERE, MR. BURTON, SEE EXHIBIT A
5 PAGE 65, LINES 15, 16, 18, 19, 20, 21, 22. THE COURT: MR. ADAIR, YOU ARE
6 SAYING IS WORKING FOR THE PROSECUTION? THE COURT: IS THAT
7 WHAT YOU ARE SAYING? THE DEFENDANT: YES, SIR -- I AM SAYING
8 HE'S STATE INTERPOSED. THE COURT: HE'S WHAT? MR. ADAIR: HE'S
9 STATE INTERPOSED. THE COURT: STATE INTERPOSED? THE DEFENDANT:
10 HE'S COURT APPOINTED. SEE EXHIBIT "A" PAGE 76, RT. EXCERPT 266, LINES
11 6, 7, 16, 17, 25-28, ALSO EXHIBIT "A" PAGE 71, RT. EXCERPT 267, LINES 1-2, 24,
12 25. THE COURT: I DON'T WANT TO GO INTO THE FACTS OF THE CASE. --
13 THERE IS NO BASIS TO DISCHARGE MR. ADAIR AT THIS TIME. -- YOUR
14 MOTION TO DISCHARGE HIM AS YOUR ATTORNEY OF RECORD IS DENIED.
15 -- ["NOW, WE WILL BE OPEN AGAIN TO THE DISTRICT ATTORNEY."
16 WE ARE AGAIN IN SESSION, PRESENT IS THE DISTRICT ATTORNEY,
17 "MR. TROCHA"]. THE PURPOSE OF THE HEARING NOW IS TO
18 SET A TRIAL DATE AFTER CRIMINAL PROCEEDINGS HAVE BEEN
19 REINSTATED. THE COURT: TUESDAY, JULY 19TH, 9 O'CLOCK A.M., IN
20 THIS DEPARTMENT. SEE EXHIBIT A, PAGE 79, RT. EXCERPT 270/299, LINES
21 1, 2, 16, 17, 19, ALSO SEE EXHIBIT "A" PAGE 78, RT. EXCERPT 268, LINE 28 -
22 THE COURT: SO I AM GOING TO ASSIGN IT BACK TO JUDGE HALGREN
23 AND FOR JUDGE HALGREN FOR THAT PERIOD OF TIME GO DOWN AND TALK
24 TO HER -- TALK TO HER. GET A HOLD OF MS. HANNA, HAVE HER AND
25 MR. ADAIR GO TALK TO HER -- (THE PROCEEDINGS WERE CONCLUDED).
26 CLEARLY THE PROSECUTOR WAS PRESENT THE HON. JUDGE
27 EXARHOS ABUSED HIS AUTHORITY BY NOT MAKING A WINDHAM
28 INQUIRY, THE PROSECUTOR REJOINED THE PROCEEDINGS AND

MR. E. W. BURTON, JR. FOR Document 1-3
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1 THE COURT FAILED TO RULE ON PETITIONERS FUNDAMENTALLY
 2 SEPARATE FARETTA PRO SE/995 MOTION AND THUS VIOLATED PETITIONERS
 3 6TH AND 14TH AMENDMENT DUE PROCESS, EQUAL PROTECTION CLAUSES, AS WELL
 4 AS PETITIONERS FEDERALLY GUARANTEED U.S. CONSTITUTIONAL RIGHT TO
 5 SELF REPRESENTATION, SEE NOW EXHIBIT A PAGE 89, RT EXCERPT 1245,
 6 LINES 18-24 THE COURT: BRIEF REPLY. MR. TROCHA: MR. BURTON HAS
 7 A DOCUMENT, WHICH -- IT'S A COPY, I GUESS, OF THE DOCUMENT
 8 WHICH HE HAD FILED APPARENTLY BACK IN JULY, I BELIEVE
 9 IT APPEARS TO BE MAILED TO THE COURT AND PART OF MANY
 10 ISSUES THAT HE RAISES IN THE DOCUMENT APPEARS TO
 11 BE A FARETTA MOTION. SEE EXHIBIT A PAGE 89, RT EXCERPT 1246,
 12 LINES 1-28 MR. TROCHA: THERE DOES APPEAR TO BE A FILE STAMP
 13 ON THE ENVELOPE. THE COURT: WHATEVER HAS BEEN FILED
 14 WITH THE COURT WOULD BE IN THE COURT FILE. MR. ADAIR:
 15 COULD I HAVE THIS FILED AS AN EXHIBIT, YOUR HONOR? THE COURT:
 16 THE PURPOSE OF IT BEING? IS IT MR. BURTON'S REPRESENTATION THAT
 17 THIS IS THE DOCUMENT HE FILED WITH THE COURT? MR. ADAIR: YES,
 18 YOUR HONOR. THE COURT: WELL, WHY DON'T YOU LET ME LOOK AT IT.
 19 IT MAY BE THAT WE HAVE IT IN THE COURT FILE, IN WHICH CASE
 20 WE DON'T NEED TO DO THAT. (COUNSEL HANDS DOCUMENT TO THE COURT)
 21 THE COURT: ALL RIGHT. THAT DOCUMENT IS IN THE COURT FILE AND
 22 THERE IS AN ENVELOPE PRECEDING THE DOCUMENT WHERE THE
 23 ENVELOPE IS FILE-STAMPED JULY 7TH. SO WE DON'T NEED TO HAVE
 24 ANOTHER COPY. AND THAT, JUST FOR THE RECORD, IS A DOCUMENT
 25 WHICH IS IN HANDWRITING IN PENCIL STATING AT THE ^{beginning} ~~beginning~~ "MEMORANDUM
 26 ^{in English} ~~OF POINTS AND AUTHORITIES~~, NOTICE OF MOTION, AND MOTION TO DISMISS
 27 BECAUSE DENIAL OF RIGHT TO DUE PROCESS, SIXTH, ^{beginning} ~~FOURTH~~ AND FIFTH
 28 AMENDMENT VIOLATIONS" AND THEN IT GOES ON WHERE ANOTHER

1 THREE OR FOUR INCHES OF--RAISING OTHER ISSUES, AND IN THE MIDDLE
2 OF THAT ON THE FRONT PAGE THERE IS A REFERENCE TO THE WORD
3 "FARETTA" SO I THINK THAT MAKES THE RECORD AS TO WHAT WAS
4 FILED. SEE EXHIBIT A" PAGE 90, RT. EXCERPT 1247, LINES 1-15, 19-22, 24, 26.
5 SEE ALSO EXHIBIT A" PAGE 91, RT. EXCERPT 1248, LINES 2, 3, 5-9, 14-17.
6 MR ADAIR: THANK YOU, YOUR HONOR, THE COURT. ALL RIGHT, LET ME DEAL
7 FIRST WITH THE ISSUE OF RELATING TO THE CLAIM OF FARETTA, FIRST
8 OF ALL, I AM NOT SURE THAT THAT WOULD REALLY APPROPRIATELY
9 BE GROUNDS FOR A NEW TRIAL MOTION AS OPPOSED TO AN ISSUE
10 FOR WHICH THERE MAY OR MAY NOT BE AN APPELLATE ISSUE
11 TO RAISE, BUT IN ANY EVENT, EVEN IF IT WERE AN APPROPRIATE
12 GROUND, I WOULD BE DENYING IT FOR THE FOLLOWING REASONS:
13 THE PAPERWORK WAS SENT BY MR. BURTON TO THE COURT ON
14 EITHER JULY 7TH OR JULY 8TH. BOTH (TRIAL BEGAN 7-19-05) DATES
15 APPEAR ON THE ENVELOPE. THE NEXT COURT HEARING THAT WE HAD
16 AFTER THAT DATE WAS THE DAY OF TRIAL, AND IT WAS NOT
17 CALLED TO THE COURT'S ATTENTION THAT THERE WAS ANY
18 PENDING FARETTA ISSUE.-- ANYTIME HE HAD WANTED THE
19 COURT TO RULE ON THE FARETTA MOTION, HE CERTAINLY WOULD HAVE
20 HAD THAT OPPORTUNITY. I WILL NOTE THAT BACK IN MARCH-- MARCH
21 23RD OF '05, IF I'M RECALLING CORRECTLY--OR MARCH 24TH--DEFENDANT
22 AT THAT TIME HAD REQUESTED A FARETTA MOTION--AND WE WENT
23 INTO RECESS--RULING THAT COUNSEL WAS ADEQUATELY
24 REPRESENTING MR. BURTON,-- THE NEXT PROCEEDINGS WERE WHEN WE
25 HAD THE COMPETENCY ISSUES RAISED (PREJUDICIAL ERROR) THE PROCEEDINGS
26 WHICH WERE SUSPENDED, AND UPON HIS RETURN TO COURT IN JULY,
27 (COURT MISTAKEN DEFENDANT RETURNED TO COURT JUNE 01, 05 WITH A
28 FILED STAMP FARETTA PRO SE MOTION FILE STAMPED 5-27-05-- HE DID

1 NOT TO MY RECOLLECTION EVER AGAIN RAISED A FARETTA ISSUE, --
2 THE TRIAL -- I DON'T FEEL THAT THAT WAS BROUGHT TO THE
3 COURT IN SUFFICIENT FASHION FOR THE COURT TO RULE AND,
4 THEREFORE, THAT GROUND FOR A MOTION FOR A NEW TRIAL IS DENIED.
5 SEE EXHIBIT "A" PAGE 92, A TEXT EXCERPT 417, LINES 1-16. STATES "EL
6 CAJON, CALIFORNIA; THURSDAY, 6/21/05, 9:20 AM. (THE FOLLOWING
7 PROCEEDINGS WERE HELD IN OPEN COURT OUT OF THE PRESENCE OF THE JURY,
8 THE COURT: ALL RIGHT. WE ARE ON THE RECORD IN PEOPLE VERSUS
9 BURTON. COUNSEL AND DEFENDANT ARE PRESENT, AS IS THE INVESTIGATING
10 OFFICER. FIRST ORDER OF BUSINESS, I RECEIVED TODAY -- ~~I AM~~ ^{EMERSON}
11 ~~NOT SENDING~~ -- A MOTION PREPARED BY MR. BURTON, AND I'M GOING
12 TO RETURN THAT TO MR. ADAIR. AS I MENTIONED THE OTHER DAY,
13 MR. BURTON, IF THERE ARE MOTIONS TO BE PRESENTED, THEY NEED
14 TO COME THROUGH MR. ADAIR. SO I'LL GIVE THAT TO HIM, I DON'T
15 KNOW IF THE CONTENT WAS ALREADY ADDRESSED WHEN WE
16 RULED ON ISSUES THE OTHER DAY, BUT ANYTHING THAT NEEDS
17 TO BE BROUGHT NEEDS TO BE THROUGH HIM. SEE EXHIBIT "A" PAGE
18 94, A TEXT EXCERPT 457, LINES 1-7, AND 21. THE COURT: FIRST OF ALL, I DID
19 RECEIVE ANOTHER DOCUMENT, MR. BURTON, THAT YOU HAD SENT TO THE
20 COURT. IT JUST MADE IT'S WAY UP TO MY DEPARTMENT. I THINK IT
21 OVERLAPS WITH ISSUES MR. ADAIR RAISED ON THE FIRST DAY OF TRIAL.
22 AGAIN, I'M HANDING IT TO MR. ADAIR. SO IF THERE ARE ANY ADDITIONAL
23 LEGAL ISSUES THAT HE THINKS ARE APPROPRIATE TO FILE, HE CAN DO SO.
24 (SEE EXHIBIT "A" PAGES 93, AND 95, A TEXT EXCERPTS 0147, AND 0142, FILE
25 WITH U.S. POST OFFICE STAMP, ENVELOPES THAT CONTAINED ~~EMERSON~~ ^{EMERSON} MOTIONS,
26 FROM COURT FILE) MR. TROCHA: THAT'S FINE. SEE EXHIBIT "A" PAGE 96,
27 A TEXT EXCERPT 0127, LINES 1-28. SEE ALSO THE BEST COPY, EXHIBIT "A" PAGE
28 96, PAGE 2 OF MOTION FOR NEW TRIAL ON 21 OCTOBER LINES 1-2, 27, 27.

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1 ~~A (AGENT KIRK) I DON'T RECALL SEEING ONE. Q (MR. ADAIR QUESTIONING) DO YOU REMEMBER~~ *End of*
2 ~~ANYTHING BEING ON TOP OF THE HONDA THAT YOU SEARCHED, OVER BACKPACK, OR ANYTHING? A~~ *End of*
3 ~~(AGENT KIRK) ON TOP BEING Q (MR. ADAIR) ON THE ROOF OF THE CAR. A (AGENT KIRK) I DON'T~~ *End of*
4 ~~RECALL. Q (MR. ADAIR) DID YOU RECOVER ANY SUCH ITEMS FROM THE INSIDE OF THE CAR?~~ *End of*
5 ~~A (AGENT KIRK) RECOVER AND TAKE AS EVIDENCE? Q (MR. ADAIR) YES. A (AGENT KIRK) I DON'T~~ *End of*
6 ~~BELIEVE SO. I COULD REFER BACK TO MY REPORT TO REFRESH MY MEMORY. Q (MR. ADAIR)~~ *End of*
7 ~~COULD YOU TAKE A LOOK AT YOUR REPORT, PLEASE. A (AGENT KIRK) OKAY Q (MR. ADAIR) DOES~~ *End of*
8 ~~THAT REFRESH YOUR MEMORY? A (AGENT KIRK) SOMEWHAT. Q (MR. ADAIR) HOW WOULD YOU~~ *End of*
9 ~~ANSWER THE QUESTION AT THIS TIME THEN? A (AGENT KIRK) I WOULD HAVE TO SAY I~~ *End of*
10 ~~DON'T RECALL TAKING ANYTHING ELSE FROM A BACKPACK. Q (MR. ADAIR) OKAY, DO YOU KNOW~~ *End of*
11 ~~WHERE THE CAR IS NOW? A (AGENT KIRK) THE LAST TIME I SAW THE CAR IT WAS AT THE~~ *End of*
12 ~~TOWN YARD. Q (MR. ADAIR) HOW LONG AGO WAS THAT? A (AGENT KIRK) IT WOULD HAVE BEEN~~ *End of*
13 ~~A COUPLE OF MONTHS AGO. MR. ADAIR: NO FURTHER QUESTIONS. THANK YOU, OFFICER. THE WITNESS~~ *End of*
14 ~~(AGENT KIRK) THANK YOU SIR, THE COURT, MISS HANNAH, ANY REDIRECT? MISS HANNAH: JUST BRIEFLY.~~ *End of*
15 SEE EXHIBIT "A" PAGE 80, R.T. EXCERPT 797, LINES 1-11- THE COURT: ALL RIGHT SO YOU
16 HAVE YOUR FRAME WORK AS TO WHAT YOU CAN DO. MR. ADAIR: YES, YOUR HONOR. THE COURT:
17 I THINK -- [MR. ADAIR: IT'S FUN BEING A PROSECUTOR.] [THE COURT: IT DOES
18 PUT YOU IN A DIFFERENT ROLE, DOESN'T IT?] ALL RIGHT, LETS TALK ABOUT EXHIBITS.
19 WE DON'T REALLY IN MY VIEW NEED TO DO THIS ON THE RECORD BECAUSE WE WILL
20 DO A MORE FULL INSTRUCTION REVIEW ON THE RECORD AT THE END OF THE CASE.
21 SEE EXHIBIT "A" PAGE 112, R.T. EXCERPT 815, LINES 1-28 (DATED 7/25/05 MARSSEN) THE COURT:
22 MR. BURTON, WHAT IS -- FIRST OF ALL, I WOULD LIKE YOU TO TELL ME WHAT CONCERNS
23 YOU HAVE ABOUT YOUR ATTORNEY. THAT'S ALL WE'RE DOING RIGHT NOW. THE DEFENDANT:
24 MAY I URGE THE COURT TO HAVE MY ATTORNEY SWORN? THE COURT: WHY? THE DEFENDANT:
25 BECAUSE HE NEEDS TO TESTIFY. THE COURT: YOU NEED TO TELL -- THE DEFENDANT: THE
26 JUDGE MAY WANT TO ASK HIM -- THE COURT: I'LL DECIDE IF I NEED TO DO THAT.
27 YOU TELL ME THE REASONS WHY AT THIS POINT IN THE MIDDLE OF A JURY TRIAL
28 WITH THE JURY WAITING OUTSIDE YOU WANT TO RAISE A MARSSEN MOTION. WHAT ARE THE

1 REASONS? THE DEFENDANT FOR ONE THING, YOUR HONOR, I HAVE JUDICIAL PREJUDICE.
2 I HAVE JUDICIAL CONFLICT OF INTEREST AS YOUR HONOR WAS THE ONE WHO WAS
3 MY BEST WITNESS IN THIS MATTER, AND I FEEL I'VE BEEN DENIED OF MY
4 RIGHT TO A FAIR AND IMPARTIAL TRIAL BECAUSE YOU WERE THE ONE WHO SIGNED
5 OFF ON THE TRO (TEMPORARY RESTRAINING ORDER APPROXIMATELY 2-23-04) WHO MADE ME
6 AWARE THAT THOMAS HAD STRUCK ANGELA SANDERS - SEE NOW EXHIBIT "A" PAGE 113,
7 R.T. 816, LINES 1-28. -- IN THE HEAD WITH THE GLASS. AND YOU ARE THE ONE THAT
8 KNOWS THAT ANGELA SANDERS PERJURED HERSELF, BECAUSE IN YOUR COURT
9 AT THE EX PARTE HEARING WHERE YOU PRESIDED AT, I HAD MY PAPERWORK
10 FILLED OUT AS A PETITIONER, BUT YOU HAD MADE US SWITCH SEATS. YOU SAID
11 THAT THE ACTION BEGAN IN THE FAMILY COURT, INITIATED THROUGH CHILD
12 SUPPORT DIVISION BY MS. SANDERS, AND YOU MADE ME THE RESPONDENT, AND,
13 THEREFORE YOU HAD KNOWLEDGE OF EVERYTHING. MY FEARS OF THOMAS WAS
14 PRESENT. IF I CAN REFER YOU TO YOUR OWN TRANSCRIPT, YOU'LL SEE THAT
15 HE (REFERRING TO MR. THOMAS) WAS STALKING ME THEN. THE COURT, AGAIN
16 LET ME STOP YOU RIGHT THERE. SO IN WHAT WAY IS THAT A REASON FOR
17 DISCHARGING MR. ADAIR? THE DEFENDANT: I WANT A MOTION FOR MISTRIAL.
18 I HAVE A CONFLICT OF INTEREST WITH COUNSEL BECAUSE I MADE HIM
19 AWARE OF THIS. AND I WANTED, YOU KNOW, TO HAVE HIM SWORN. HE'S
20 AWARE OF THIS CONFLICT, THE COURT: OKAY ARE THERE ANY OTHER GROUNDS?
21 THE DEFENDANT: WHEN I MADE MY MOTION TO GO PRO PER, I FELT YOU WERE
22 PREJUDICE IN DENYING THAT AND ALL MY OTHER MOTIONS BECAUSE -- THAT
23 DENIED ME -- IT DEPRIVED ME OF MY 14TH AMENDMENT RIGHT FOR DUE PROCESS,
24 AND I'D LIKE A DISMISSAL BASED ON A VIOLATION OF MY 6TH AMENDMENT RIGHT
25 AND MY 14TH AMENDMENT RIGHT, SEE NOW EXHIBIT "A" PAGE 114, R.T. EXCEPT 817,
26 LINES 1, 2, 5-18, 21-28 - (THE DEFENDANT) BECAUSE YOU DENIED ME MY RIGHT TO GO
27 PRO PER AND YOU KNEW THAT I WAS COMPETENT, SEE NOW EXHIBIT A, PAGE 114, R.T.
28 EXCEPT 168, LINES 1-12. THE DEFENDANT: INVOKE MY SIXTH AMENDMENT RIGHTS TO

1 REPRESENT MYSELF AS COUNSEL (16 MARCH 05). THE COURT: ALL RIGHT SIR, I'LL
2 TAKE THAT UP IN A MOMENT. I WANT TO FIRST DEAL WITH THE ISSUES THAT ARE ON
3 CALENDAR FOR TODAY. "I KNOW OVER THE COURSE AND THE HISTORY OF THIS
4 CASE" ISSUES LIKE THAT HAVE BEEN RAISED BEFORE. SO I'LL SET ASIDE
5 TIME AT THE END OF TODAY'S HEARING TO HEAR THOSE FROM YOU. ALL RIGHT,
6 AND THEN IF I GRANT YOUR MOTION, YOU WILL HAVE THE OPPORTUNITY TO ADDRESS
7 ANYTHING WE'VE ADDRESSED. THE DEFENDANT; EXCUSE ME. I WOULD LIKE A
8 MARDEN (ALSO) THE COURT: ALL RIGHT WE'LL DO THAT TOO. SEE NOW EXHIBIT "A"
9 PAGE 8, R.T. EXCEPT 21, LINES 1-17 (11-05-04 HON. JUDGE PACEKEL) IF WHAT YOU'RE TELLING
10 ME IS THAT YOU HAVE A DOUBT ABOUT YOUR PRESENT MENTAL COMPETENCE TO PROCEED
11 WITHIN THE MEANING OF PENAL CODE SECTION 1368, ET SEQUITUR, I REJECT THAT
12 SUGGESTION OUTRIGHT BASED UPON MY INTERACTION WITH YOU HERE THIS
13 AFTERNOON. I CANNOT GET INSIDE YOUR HEAD IN A MANNER OF SPEAKING, BUT
14 CLEARLY THE MANNER WHICH YOU HAVE PRESENTED HERE THIS AFTERNOON, THE
15 MANNER IN WHICH YOU HAVE COGENTLY AND LOGICALLY SPOKEN AT LENGTH
16 CONCERNING YOUR CASE, ALL OF THAT CAUSES THE COURT TO CONCLUDE THAT
17 YOU'RE [ABSOLUTELY COMPETENT], [AS A MATTER OF LAW], AT THIS TIME SUCH
18 THAT THESE CRIMINAL PROCEEDINGS WILL GO FORTH [WITHOUT UNNECESSARY INTERRUPTION]
19 FOR PURPOSES OF A 1368 EXAMINATION EVALUATION AND HEARING. [I FIND NOT EVEN A
20 SCINTILLA OF EVIDENCE AS TO SUPPORT OR WARRANT THE SUSPENSION OF CRIMINAL
21 PROCEEDINGS IN THIS CASE. SO LET'S RETURN TO WHAT WE WERE ADDRESSING
22 HERETOFORE.] THE COURT HON. JUDGE HALGREN FAILED TO RULE ON PETITIONERS
23 INVOKED 6TH AMENDMENT RIGHT TO SELF REPRESENTATION ON 16 MARCH 05, AS THE EXCERPT
24 SHOWS THE FAILURE TO RULE, AND THUS THE DENIAL OF RIGHT TO SELF REPRESENTATION
25 AFTER HE HAD BEEN DEEMED CAUTELLY COMPETENT 11-05-04 WAS PREJUDICIAL
26 REVERSIBLE ERROR. COUNSEL ON DIRECT APPEAL RENDERED INEFFECTIVE ASSISTANCE OF
27 COUNSEL, IN OMITTING THE FACTS, AND MISSTATING THE FACTS CONCERNING HIS
28 FIRST MOTION FOR SELF REPRESENTATION WAS 16 MARCH 05, NOT 24 MARCH 05, AND THAT THE FACT

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1 THAT THE HONORABLE JUDGE ALLAN PRECKEL DENIED PETITIONER LAWFULLY COMPETENT
 2 ON 11-05-04. PETITIONER MADE A TIMELY PROFFERED MOTION FOR SELF REPRESENTATION
 3 PER HIS FEDERALLY GUARANTEED RIGHT PER 6TH AND 14TH U.S CONST AMENDMENT THAT
 4 WAS NEVER RULED ON. SEE NOW EXHIBIT "A" PAGE 96, RT. EXCEPT 0127, LINES 1-28,
 5 (NOTICE OF MOTION TO DISMISS BECAUSE DENIAL OF RIGHT TO DUE PROCESS, 6TH, 14TH, AND
 6 5TH AMENDMENT VIOLATION & PRO/SE MOTION) ALSO SEE FILE STAMP ENVELOPE EXHIBIT "A" PAGE
 7 93, FILE STAMPED 7-07-05, APPROXIMATELY 12 DAYS PRIOR TO TRIAL WHICH BEGAN 7-19-05, WITH THE
 8 JURY SWORN ON 7-20-05. SEE EXHIBIT "A", PAGE 109, RT. EXCEPT 0361, NOW SEE EXHIBIT "A" PAGE,
 9 114, R.T. EXCEPT 817, LINES 4-18, 21, 25, 28, ALSO SEE EXHIBIT "A", PAGE 115, R.T. EXCEPT 818, LINES 1-16,
 10 20-26 (PETITIONER DENIES OMITTED PORTIONS) THE COURT, AND WHAT IS THE -- HOW DOES THAT
 11 RELATE TO YOUR -- THE DEFENDANT? COUNSEL WAS AWARE OF THIS AND HE DID NOT
 12 INFORM THE COURT, THIS IS NEGLIGENCE IN MY PROSECUTION -- HE DID NOT INFORM
 13 THE COURT OF THIS MATTER, AND THAT IS THE INEFFECTIVE ASSISTANCE OF COUNSEL
 14 IN VIOLATION OF MY 6TH AND 14TH AMENDMENT RIGHTS TO DUE PROCESS. I'D LIKE A
 15 DISMISSAL ON THAT. COUNSEL IS AWARE THAT PROSECUTION HAS NOT PROVIDED
 16 ME WITH ALL DISCOVERY AS MR. PLUMMER HAD MOTIONED MS. MARIA HANNAH WITH
 17 MOTIONS ONE [BRADY] -- FOR ALL DISCOVERY. PROSECUTION DID NOT RESPOND WITHIN
 18 A TIMELY MANNER, THEREFORE, DENIED ME MY DUE PROCESS, BECAUSE I HAD THE
 19 RIGHT TO BE ABLE TO KNOW THE EVIDENCE AGAINST ME. -- I WOULD OBJECT
 20 TO ANYTHING PROSECUTION WOULD SAY AS FAR AS THEIR. SEE EXHIBIT "A" PAGE 25, R.T.
 21 EXCEPT 189, LINES 21-28, ALSO SEE EXHIBIT "A" PAGE 26, R.T. EXCEPT 190 LINES 4. "THE COURT,
 22 -- WHAT OTHER (16 MARCHOS MARSDEN HEARING) ISSUES ARE THERE BEYOND WHAT YOU'VE TOLD
 23 ME HAVE NOT BEEN ADEQUATE BY THE DEFENSE? THE DEFENDANT: THE FACTS OF THE
 24 CASE HAVE BEEN MISSTATED, -- I ASKED HIM TO FILE A MOTION WITH THE JUDGE --
 25 YOURSELF -- ORDERING PROSECUTION TO TURN OVER ALL DISCOVERY BECAUSE MOTIONS
 26 THAT WERE FILED BY MR. PLUMMER [JULY] -- TO COMPEL PROSECUTION TO TURN OVER
 27 ALL DISCOVERY. SEE EXHIBIT "A" PAGE 26, R.T. EXCEPT 190, LINES 14-21, 27, 28 (16 MARCHOS MARSDEN)
 28, ALSO SEE EXHIBIT "A" PAGE 27, R.T. EXCEPT 191, LINES 12-18, 20-28. ALSO SEE EXHIBIT "A" PAGE 28, R.T. EXCEPT
 2-4-7-10
 ENVELOPE

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1 192, LINES 1-2, 5-11, SEE EXHIBIT "A" PAGE 29, RTEXCERPT 193, LINES 12-25, SEE ALSO EXHIBIT "A",
2 PAGE 30, RTEXCERPT 194, LINES 9-11, 17-23, 27, SEE EXHIBIT "A" PAGE 31, RTEXCERPT 195, LINES 2,
3 7-9, 14, 20-25, 27, 28, SEE EXHIBIT "A" PAGE 32, RTEXCERPT 196, LINES 1, 2, 4-8, 13-20, 22, 23, 25,
4 26-28. SEE EXHIBIT "A" PAGE 33, RTEXCERPT 197, LINES 1, 4, 7, 8, 10, 12, 16-20, SEE NOW EXHIBIT "A",
5 PAGE 34, RTEXCERPT 198, LINES 1, 2, 3, 8-17, 21-23, 25, 27, 28, SEE EXHIBIT "A" PAGE 35, RTEXCERPT
6 EXCERPT 199, LINES 1, 3, 4, 5, 8, 9, 11, 12, 16, 17, 18, 25-28. SEE EXHIBIT "A" PAGE 36, RTEXCERPT 200,
7 LINES 1-14, 17, 18-22, SEE EXHIBIT "A" PAGE 37, RTEXCERPT 201, LINES 9-12, 16-28,
8 SEE EXHIBIT "A" PAGE 38, RTEXCERPT 202, LINES 2, 3, 8-11, 15-17, 21. SEE EXHIBIT "A" PAGE
9 39, RTEXCERPT 203, LINES 1, 2, 3, 5, 7, 8, 9, 16-18, SEE EXHIBIT "A" PAGE 40, LINE 1-7, 10,
10 12, 17-20, 22, 24-28, ~~SEE EXHIBIT "A" PAGE 41, RTEXCERPT 204.~~ SEE EXHIBIT "A" PAGE 41, RTEXCERPT
11 205, LINES 4-8-15-18, 24-26. SEE EXHIBIT "A" PAGE 49, RTEXCERPT 0350, SEE NOW
12 EXHIBIT "A" PAGE 50, RTEXCERPT 0351, SEE EXHIBIT "A" PAGE 51, RTEXCERPT 210, LINES
13 1-4, 6-20, 22-28, SEE EXHIBIT "A" PAGE 52, RTEXCERPT 211, LINES 1-5, 16-28. SEE
14 EXHIBIT "A" PAGE 53, RTEXCERPT 212, LINES 11, 15, 17-28, SEE NOW EXHIBIT "A" PAGE 54,
15 RTEXCERPT 213, LINES 1-28 (PETITIONER DENIES ALO OMITTED PORTIONS AS INDICATIVE
16 BY BEING MARKED OUT.) SEE EXHIBIT "A" PAGE 55, RTEXCERPT 214, LINES 1-6, 9, 10, 12, 13,
17 15, 16, 17, 22-26, SEE ALSO EXHIBIT "A" PAGE 56, RTEXCERPT 215, LINES 2-28, SEE EXHIBIT
18 "A" PAGE 57, RTEXCERPT 216, LINES 1, 2, 6-8, 13-22, SEE EXHIBIT "A" PAGE 58, RTEXCERPT
19 EXCERPT 217, LINES 4-21, 22-28, SEE NOW EXHIBIT "A" PAGE 59, RTEXCERPT 218/250
20 LINES 1-4, 7-12, 15-19. THE COURT: I DO WANT TO NOTE, FOR THE RECORD, THE
21 DOCUMENT YOU HANDED TO ME WHEN YOU WERE TALKING ABOUT THE LADY WHO CAME
22 TO VISIT YOU IDENTIFIES HER AS CATHERINE DI FRANCESCA, WHO THE COURT
23 RECOGNIZES AS A PSYCHOLOGIST OR A PSYCHIATRIST WHO DOES COURT-APPOINTED
24 EVALUATIONS AND OTHERWISE. SHE DOES APPEAR TO BE SOME MENTAL HEALTH
25 EXAMINER. AND THE DATE REFERENCED IS -- I'M NOT QUITE SURE HOW TO READ THIS
26 DOCUMENT, BUT IT LOOKS LIKE JANUARY 5TH OF 05, (SEE EXHIBIT "A" PAGE 19, RTEXCERPT 193,
27 LINES 9-12-14, 19, 24, 25-28 THE DEFENDANT: -- ASSUMING I WOULD HAVE A VISIT WITH
28 MR. ADAIR. QUITE TO MY SURPRISE, IT WAS BY SOMEONE THAT WAS NOT MY ATTORNEY

1 THE COURT: LET ME MAKE SURE I UNDERSTAND. THE COURT: OKAY, NOW --
2 TELL ME SOMETHING ELSE BEYOND THIS VIOLATION OF ATTORNEY/CLIENT
3 PRIVILEGE. WHAT ARE YOUR OTHER CONCERNS? THE COURT: IT'S NOT A CAPITAL CASE
4 THE DEFENDANT: WELL, IT HAS TO DEAL WITH THE REST OF MY LIFE, AND I FEEL
5 THAT TIME AND EFFORTS NEEDED TO TAKE PLACE AS FAR AS PUTTING THIS CASE
6 TOGETHER AS FAR AS STRATEGY, -- I FEEL AS THOUGH THAT HAS NOT BEEN DONE. I
7 FEEL THAT, SEE EXHIBIT A, PAGE 20, RT EXCERPT 184, LINES 1-3 - THERE'S A CONFLICT
8 OF INTEREST HERE. AND IT HAS BEEN FROM THE VERY BEGINNING. I HAVE
9 EVIDENCE HERE THAT YOU CAN LOOK AT IF THE BALIFF CAN TAKE THIS. (SEE EXHIBIT A
10 PAGE 18, RT EXCERPT 182, LINES 4, 5, 7-9, 12-16, 22-23. THE COURT: OKAY. AND DO YOU
11 FEEL THAT MR. ADAIR HAS NOT PROPERLY REPRESENTED YOU? THE COURT: AND WHY DO YOU
12 FEEL THAT WAY? THE DEFENDANT: WELL, THERES BEEN A BREAK IN THE ATTORNEY/CLIENT
13 PRIVILEGE. -- I HAD CALLED HIS OFFICE, REQUESTING TO SEE HIM, BECAUSE I HAD
14 SOME INFORMATION FOR HIM ON SOME MATTERS PERTAINING TO MY CASE. HOWEVER --
15 A WOMAN SHOWED UP, ATTEMPTING TO INTERVIEW ME AND STATING THAT HER CAPACITY
16 WAS SOME SORT OF PSYCHIATRIST OR WHATEVER, I REFUSED THE INTERVIEW --
17 LAW, AND I FELT THAT I WAS VIOLATED AS FAR AS MY RIGHT TO PRIVACY AND MY
18 ATTORNEY/CLIENT PRIVILEGE WAS VIOLATED BY THIS) THE COURT: (EXHIBIT A, PAGE 26, RT
19 EXCERPT 190, LINES 27 AND 28) I'LL GIVE THIS BACK TO MR. ADAIR, BECAUSE HE MAY BE ABLE
20 TO INTERPRET IT, AND WE CAN AT LEAST PINPOINT THE DATE. THE DEFENDANT: [MY POINT
21 IS I HAD ALREADY EXPRESSED, AS FAR AS MY "RIGHTS TO REFUSE"] THE COURT: [I
22 DON'T NEED YOU TO REARGUE THE MOTION] THE DEFENDANT: YES MA'AM, MR. ADAIR,
23 IT LOOKS LIKE 5 JANUARY, YOUR HONOR. THE COURT: ALL RIGHT. -- OKAY I'LL TAKE
24 THAT BACK FOR THE MOMENT.

1 ADAIR DID NOT INFORM PETITIONER THAT THE TRIAL DATE HAD BEEN
2 TRAILED AND THAT VIOLATED DEFENDANTS RIGHT TO NOTICE, ON
3 MOTION FOR A NEW TRIAL ON 21 OCTOS, THE COURT WAS MISTAKEN
4 TO THE FACTS CONCERNING PETITIONER'S FARETTA MOTION, AS HE
5 HAD TIMELY FILED FARETTA PRO SE MOTION ON 27 MAY, 05, AND
6 ON OR ABOUT 07 JULY 05, OR 08 JULY 05, THAT BOTH
7 WERE NEVER RULED ON - AND ALSO HIS ENJOINED 6TH
8 AMENDMENT RIGHT TO SELF REPRESENTATION WAS
9 NEVER RULED ON, THUS DEPRIVING PREJUDICIALLY AND
10 ERRONEOUSLY OF HIS 6TH AND 14TH U.S. CONST. FEDERALLY
11 GUARANTEED RIGHT TO SELF REPRESENTATION, AND
12 ERRONEOUSLY AND PREJUDICIALLY PLACED PETITIONER ON
13 A 1368 HOLD AFTER HE HAD ALREADY BEEN DEEMED
14 LAWFULLY COMPETENT BY THE HON. JUDGE PRECKEL ON 11-05-04,
15 PETITIONER'S FUNDAMENTAL RIGHT TO A FAIR AND IMPARTIAL
16 TRIAL WAS VIOLATED BY THE TRIAL COURT, AS ALSO THE BIAS
17 TRIER OF FACT, WAS A DEPORTED MATERIAL WITNESS TO HIS DEFENSE
18 THAT ON COURT BUSINESS RECORDS. THE GOVERNMENT MISCONDUCT
19 IN SUPPRESSING THE TRIAL JUDGE, HON. LAURA HALGREN AS A WITNESS
20 AFTER A FILED, DEFENSE MOTION ^{FOR DISCOVERY} THAT ACCORDING TO COUNSEL ADAIR WAS
21 SERVED ON THE PROSECUTOR, MS. HANNA WITHOUT A RESPONSE VIOLATED PETITIONER'S
22 FEDERAL DUE PROCESS AND EQUAL PROTECTION CLAUSES OF THE 5TH, 6TH,
23 AND FOURTEENTH U.S. CONST. AMENDMENTS, ADDITIONALLY, THE COURT, SPECIFICALLY
24 THE HON JUDGE PRECKEL'S DENIAL OF COUNSEL AND DEFENDANT OF HIS RIGHT TO
25 AN INCAMERA, ON OR ABOUT 1-28-05 AT THE 1538.5 HEARING VIOLATED PETITIONER'S
26 14TH U.S. CONST. AMEND, DUE PROCESS AND EQUAL PROTECTION CLAUSES.
27
28

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1 ~~SOMETHING MR. BURTON IS ASKING FOR. IT'S SOMETHING AND I~~
2 ~~WANT TO~~ I'M ASKING FOR. SEE NOW EXHIBIT E PAGE 7 R.T. EXCERPT 29
3 ~~THE~~ ^{THE} (1538.5 HEARING APPROX 1-31-05) LINES, 1-16, 18-23. -MR ADAIR: I
4 THINKS IT'S OBVIOUS TO THE COURT AT THIS TIME THAT MR. BURTON
5 IS VERY CONCERNED ABOUT THE OUTCOME OF THIS CASE AND IS--
6 THE COURT: I APPRECIATE THAT AND THAT'S CERTAINLY APPROPRIATE. MR ADAIR,
7 AND HE REALIZES THAT HE'S FACING A POSSIBLE LIFE TOP SENTENCE WHERE
8 HE VERY WELL COULD DIE IN PRISON SHOULD HE GET THE-- BE CONVICTED
9 OF THESE CHARGES, AND, THEREFORE, BE SENTENCED ON THE CHARGES.
10 HE AND I HAVE BEEN TRYING TO WORK CLOSELY TOGETHER. I HAVE
11 BEEN TRYING TO INCORPORATE INTO THE MOTIONS AND INTO MY ARGUMENTS
12 HIS CONCERNS ABOUT THE EVIDENCE AND THE PROCEDURES THAT ARE
13 INVOLVED IN THIS CASE AND THE SEIZING OF EVIDENCE, AFTER HE READ
14 THE MOTION TO SUPPRESS THAT I FILED, MR. BURTON FELT THAT THE
15 STATEMENT OF FACTS WAS INADEQUATE AND DID NOT FULLY AND ACCURATELY
16 REFLECT THE-- IS ASKED ME TO CHANGE THOSE AND REFLECT MORE
17 ACCURATELY. SO THAT'S ONE OF THE REASONS FOR THE CONTINUANCE
18 OR THE REQUEST FOR A CONTINUANCE. THE COURT: WELL PARENTHETICALLY
19 IN THE COURT'S VIEW, THAT'S NOT A COMPELLING REASON TO GRANT A
20 CONTINUANCE OF THE SUPPRESSION HEARING. (SEE EXHIBIT "E", PAGE 8, R.T. EXCERPT 30,
21 LINES, 20-26 MR. ADAIR: YOUR HONOR, AS FAR AS THE HISTORY OF THE CASE,
22 THE LAST TIME WE WERE IN COURT, JANUARY THE 6TH, I HAD REQUESTED OF
23 JUDGE EXARHOS ADDITIONAL TIME TO PREPARE FOR MOTIONS, TO COLLECT
24 EVIDENCE, AND I FELT THAT WE DIDN'T HAVE IT AT THAT POINT. IT WAS
25 MY IMPRESSION THAT JUDGE EXARHOS WAS GOING TO GRANT THAT ~~THAT~~ ^{THAT}
26 ~~THAT POINT~~ ^{THAT} BUT MR. BURTON OBJECTED TO ANY FURTHER DELAY IN THIS
27 CASE, SEE EXHIBIT "E", PAGE 3, R.T. EXCERPT 25, LINES 17-28 MR. ADAIR: MY CLIENT
28 INFORMS ME HE WANTS AN IN CAMERA HEARING. THE COURT: WELL, WHAT HE

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1 WANTS AND WHAT HE'S GOING TO GET ARE TWO DIFFERENT THINGS. THERE'S NO
2 REASON TO GO IN CAMERA, WE'RE GOING TO PROCEED ON THE RECORD.
3 MR. ADAIR: MY CLIENT ALSO INFORMED ME HE WOULD LIKE A MARS DEN.
4 THE COURT: NO. WE'RE NOT GOING TO TAKE UP A MARS DEN MOTION BECAUSE,
5 AGAIN, I'M VERY FAMILIAR WITH THE HISTORY OF THIS CASE AND FRANKLY,
6 -- YOU'RE NOW THE THIRD ATTORNEY OF RECORD. AT ANOTHER TIME
7 HE HAS SOUGHT MARS DEN'S (UPON APPOINTMENT OF CONFLICTING COUNSEL
8 NEWTON APPROX 11-09-04) WHO REPRESENTED AN ALLEGED CO-DEFENDANT MR. MCKELVEY
9 AT DEFENDANT'S PRELIM, COURT FAILED TO INQUIRE INTO THE APPOINTMENT OF CONFLICTING
10 COUNSEL UPON DEFENDANT'S THRESHOLD MARS DEN MOTION SEE AUTOMATIC REVERSAL IN
11 HOLLOWAY V. ARKANSAS, 435 U.S. 475, 490-491, 98 S. CT. 1173, 1181-1182, 55 L. ED. 2D 426 (1978)
12 (THUS, AN INQUIRY INTO A CLAIM OF HARMLESS ERROR HERE WOULD REQUIRE,
13 UNLIKE MOST CASES, UNGUIDED SPECULATION") SEE NOW EXHIBIT "E" PAGE 4, RT,
14 EXCERPT 26, LINES 1, 2, 3, 4, 5, 28, (PETITIONER DENIES OMITTED PORTIONS) AGAINST
15 PREVIOUS COUNSEL, AND I GUESS HE'S OF THE MIND THAT HE DRIVES
16 THIS CASE. -- AND I KNOW OF NO REASON THAT WOULD JUSTIFY A
17 MARS DEN HEARING PRESENTLY CONCERNING YOUR REPRESENTATION OF
18 HIM. MR. ADAIR: CAN I HAVE JUST A MOMENT, YOUR HONOR? (PAUSE) MR.
19 ADAIR: MR. BURTON IS INDICATING TO ME THAT THERE ARE SOME
20 ADDITIONAL ITEMS OF EVIDENCE THAT HE'S DISCOVERED THAT SHOULD
21 BE THE SUBJECT OF THE 1538.5 SUPPRESSION MOTION THAT WERE
22 NOT LISTED IN THE LIST OF ITEMS TO BE SUPPRESSED. THE COURT:
23 SOUNDS TO ME LIKE YOUR PRESENT MOTION AND THE LIKE MOTION
24 THAT WAS FILED BY THE PRIOR ATTORNEY, MR. PLUMMER, -- MR. ADAIR:
25 HE HAS A LIST OF APPROXIMATELY 41 ITEMS WHICH WERE SEIZED ^{ENJOINED}
26 PART OF THE EVIDENCE LIST BY THE POLICE DEPARTMENT THAT HE
27 WISHES SUPPRESSED. THE COURT: WE'LL MAKE A COPY OF THAT LIST,
28 TREAT IT AS AN ATTACHMENT TO THE PENDING MOTION, AND DEEM THAT

61

EVIDENCE TO FALL WITHIN THE CONFINES OF THE PRESENT MOTION. --
DO YOU HAVE ANY QUARREL WITH THAT, MISS HANNAH? MS. HANNAH: NO
YOUR HONOR. THE COURT: ALL RIGHT. MAKE THESE COPIES, SEE EXHIBIT "E"
PAGES RT EXCERPT 27, LINES 2, 3, 4, 7-12-17. 25-28, SEE ALSO EXHIBIT "E"
PAGE 6, RT EXCERPT 28, LINES 1-15. MR. ADAIR: THERE ARE TWO OTHER ITEMS
THAT I DON'T BELIEVE ARE ON THE LIST. ONE IS A CAMERA THAT THE
ALLEGED VICTIM IN THIS CASE HAD AND APPARENTLY WAS USING TO --
THE COURT: SO HOW IS THAT PROPERLY SUBJECT TO A SUPPRESS MOTION?
MR. ADAIR: COULD I HAVE A MOMENT, YOUR HONOR? MR. BURTON IS ASKING
FOR SOME TIME SO HE CAN FIND THE PAPER CONCERNING THE CAMERA.
THE OTHER ISSUE MAY BE -- THE COURT: HE DOESN'T HAVE ANY
STANDING UNLESS IT IS AMONG THE ITEM'S SEIZED FROM HIS
VEHICLE OR HIS RESIDENCE. MR. ADAIR: THE OTHER ITEM IS THE
AUTOMOBILE, THE COURT: ALL RIGHT FOR THE RECORD, THE TWO
PAGES THAT I DIRECTED THE CLERK TO COPY, THOSE ARE BEING
RETURNED TO MR. BURTON AT THIS TIME. COPIES THEREOF HAVE
BEEN MADE FOR THE COURT, ALSO FOR MR. ADAIR AND MISS HANNAH,
AND THESE TWO PAGES WILL BE TREATED AS AN ATTACHMENT TO
THE MOTION, RECENTLY FILED 1536.5 MOTION DEEMED A SUPPLEMENTAL
MOTION FILE STAMPED JANUARY 14TH (05) OF THIS YEAR AS FILED BY
MR. ADAIR. MR. ADAIR, GO AHEAD, MR. ADAIR: CONCERNING THE
CAMERA, I BELIEVE IT -- IS -- BECAUSE IT'S PHYSICAL EVIDENCE
WHICH IS EXCULPATORY OR MAY -- (SEE EXHIBIT "E", PAGE 6, RT EXCERPT 28
LINES 1-15) -- BE (MR. ADAIR) EXCULPATORY, HE FEELS
IT IS EXCULPATORY. THE COURT: WELL, THAT'S PROOF AGAIN THAT A
LITTLE KNOWLEDGE IS A DANGEROUS THING. THAT CAMERA IS NOT
SUBJECT TO ANY SUPPRESSION MOTION, MR. ADAIR: YOUR HONOR, MR. BURTON
APOLOGIZES. I THINK HE UNDERSTANDS WHAT THE ISSUES ARE TODAY. AT THIS

1 TIME HE'S APOLOGIZING TO THE COURT THAT HE'S TAKEN UP YOUR TIME
2 ON AN ISSUE THAT IS REALLY MORE OF A TRIAL ISSUE OR DISCOVERY ISSUE
3 BY THE WAY, COULD I ADDRESS DISCOVERY BRIEFLY? THE COURT: NO.
4 WHEN I SAY "NO" -- OF A (SEE LINES 22-24) REQUEST FOR A CONTINUANCE
5 OF THE TRIAL DATE AND/OR A MOTION OR DISCUSSION AS TO THE SUBJECT
6 MATTER OF THE DISCOVERY. SEE EXHIBIT "E" PAGE 9 RT. EXCERPT 31, LINES 10,
7 11, 12, 14-28, ALSO SEE EXHIBIT E, PAGE 10 RT. EXCERPT 32, LINES 1-5, 7-9, 14, 18-28
8 MR ADAIR: ALL RIGHT. I THINK THE LAST ITEM, YOUR HONOR, IS THERE ARE CERTAIN
9 ITEMS OF EVIDENCE THAT I WOULD LIKE TO LOOK AT PRIOR TO THE HEARING -- VIEW.
10 THE COURT: YOU'RE GOING TO HAVE TO BE A LITTLE MORE SPECIFIC THAN THAT.
11 MR ADAIR: THERE ARE PHOTOGRAPHS THAT WERE TAKEN OF THE CAR, THE AUTOMOBILE,
12 I DON'T KNOW -- I DON'T HAVE A LIST OF PHOTOGRAPHS, I DON'T KNOW ANYONE
13 HAS EVER PREPARED, OR AT LEAST IT WAS NEVER GIVEN TO ME, SO I CAN'T SAY
14 WHAT PHOTOGRAPHS EXIST AND DON'T EXIST. BUT I BELIEVE THAT THEY'RE
15 IN THE REPORTS. IT DOES INDICATE THAT THERE ARE PHOTOGRAPHS OF
16 MR. BURTON'S CAR, AND PART OF OUR MOTION COVERS THE SEARCH OF THE
17 CAR (PARKED ON THE CURTILAGE IN PETITIONERS REASONABLE EXPECTATION
18 OF PRIVACY.) OF COURSE, IF -- I'M NOT SURE WHAT THE PROSECUTION'S
19 POSITION IS AS FAR AS THE JUSTIFICATION FOR THE SEARCH OF MR. BURTON'S
20 APARTMENT AND THE CAR, WHETHER THAT'S GOING TO BE RELEVANT. THE COURT:
21 JUSTIFICATION ASSERTED BY THE PEOPLE IS SET OUT IN THEIR OPPOSITION
22 AS HERETOFORE FILED THAT YOUR CLIENT, ALLEGEDLY, UNDERLINE ALLEGEDLY,
23 BECAUSE IT'S NOT YET BEEN ADDRESSED BY WAY OF EVIDENCE, -- THE RESIDENCE
24 -- SEARCH OF HIS APARTMENT. THE COURT: THAT'S THE ONLY BASIS UPON WHICH
25 THE PEOPLE ARE ASSERTING, AS I UNDERSTAND IT AT LEAST, AS TO THE
26 RESIDENCE -- THE COURT: ALL RIGHT, -- AND, AGAIN, CONSISTENT WITH THE LOCAL
27 RULES OF COURT, THE TRANSCRIPT OF THE PRELIMINARY EXAMINATION IS RECEIVED
28 AS PART OF THE EVIDENCE FOR PURPOSES OF THIS PRESENT MOTION HEARING

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1 THE SEARCHES AND SEIZURES IN QUESTION THAT GIVE RISE TO THIS
2 SUPPRESSION MOTION WERE DONE WITHOUT A WARRANT, AND, ACCORDINGLY,
3 THAT MEANS THE PEOPLE HAVE THE LABORING OAR TO SEEK TO
4 LEGALLY JUSTIFY THE SEARCHES AND SEIZURES WHICH ARE BEING
5 ATTACKED BY AND THROUGH THIS MOTION, AND SO, MISS HANNAH, YOU CAN
6 GET IN YOUR ROWBOAT AND START PULLING ON THE OARS. MS. HANNAH,
7 THANK YOU, YOUR HONOR. THE PEOPLE - SEE NOW EXHIBIT "E" PAGE 13, R.T.,
8 EXCERPT 64, LINES 22-28, AND ALSO SEE EXHIBIT "E", PAGE 14, LINES 1-5,
9 MR. ADAIR: COULD I HAVE A MOMENT WITH MY CLIENT, YOUR HONOR?
10 THE COURT: SURE. "MR. ADAIR." MR. ADAIR, YES YOUR HONOR. (COUNSEL ASLEEP)
11 THANK YOU. BEFORE WE GO ANY FURTHER, YOUR HONOR, MR. BURTON WOULD
12 LIKE YOU TO READ HIM THE COURT RULES CONCERNING HIS RIGHTS
13 TO A CONTINUANCE, HIS RIGHT TO AN "IN CAMERA HEARING AND HIS
14 RIGHT TO APPEAL. THE COURT: WELL, I'M NOT GOING TO DO ANY
15 OF THAT AT THE MOMENT. PLUS IT'S NOT MY FUNCTION TO RECITE
16 LAW AND PROCEDURE FOR THE BENEFIT OF MR. BURTON. STATEMENT OF
17 RELEVANT FACTUAL BACKGROUND - AT THE 1538.5 SUPPRESSION HEARING
18 ON OR ABOUT 31 JANOS, COUNSEL ADAIR WAS ASLEEP, AND DEFENDANT WAS
19 WITHOUT LEGAL ASSISTANCE FOR A SUBSTANTIAL PORTION OF THE PROCEEDINGS,
20 COUNSEL WAS ABSENT, UNCONCIOUS, UNPREPARED, MISSTATED FACTS IN
21 HIS MOTION TO SUPPRESS, DID NOT AT ALL TIMES KNOW WHAT WAS OCCURRING
22 IN THE COURTROOM, PETITIONER WAS DENIED HIS 6TH A 14TH U.S. CONST. AMEND)
23 RIGHT GUARANTEED FEDERALLY TO THE EFFECTIVE ASSISTANCE OF COUNSEL, SEE
24 EXHIBIT "E", PAGE 16, R.T. EXCERPT 76, LINES 25-28, SEE ALSO EXHIBIT "E", PAGE
25 17, R.T. EXCERPT 79, LINES 1-7, 9-24 MR. ADAIR (QUESTIONING) BUT YOU WERE
26 NEVER READ YOUR RIGHTS; CORRECT? THE COURT: "HE'S ALREADY
27 ANSWERED THAT AND IT'S IRRELEVANT AND IT'S BECOMING VERY CLEAR
28 THAT MR. BURTON IS NOW DIRECTING THE QUESTIONING BY SCRIBBLING

1 NOTES FOR YOUR BENEFIT, MR. ADAIR, AND FRANKLY, A LOT OF THE
2 QUESTIONS ARE IRRELEVANT. DO YOU HAVE ANYTHING FURTHER?

3 MR. ADAIR: IF I COULD HAVE A MOMENT, YOUR HONOR. YOUR HONOR MY
4 CLIENT WOULD LIKE YOU TO KNOW THAT HE IS DISABLED AND HE HAS
5 A CERTAIN IMPEDIMENT AS FAR -- THE COURT: WHAT'S THAT SUPPOSED
6 TO MEAN? MR. ADAIR: I DON'T KNOW, YOUR HONOR. THE COURT: NOR DO
7 I. SO WE'RE GOING TO KEEP ON GOING. THE COURT: WELL I UNDER-
8 STAND THAT HE MAY HAVE A VISION PROBLEM, BUT THAT'S NEITHER HERE NOR
9 THERE FOR PURPOSES OF THIS PRESENT HEARING, DO YOU HAVE ANYTHING
10 FURTHER BY WAY OF QUESTIONS TO THE WITNESS? MR. ADAIR: NO

11 YOUR HONOR. SEE EXHIBIT "E" PAGE 18, RTE EXCERPT 102, LINES 1-13, 19-28 -
12 MOMENT? (MR. ADAIR) (PAUSE) MR. ADAIR: YOUR HONOR, COULD WE SUPPLEMENT THE
13 LIST OF ITEMS THAT WERE REQUESTING BE SUPPRESSED WITH AN
14 ADDITIONAL LIST? COULD THIS BE MARKED AS AN EXHIBIT?

15 THE COURT: WELL, LET'S MAKE COPIES OF IT FOR YOU AND MISS
16 HANNAH, AND THEN I'LL REVIEW IT AND WE'LL GO FROM THERE.

17 MR. ADAIR: I DID SHOW IT TO THE PROSECUTOR, YOUR HONOR. THE COURT:
18 I WANTED HER TO HAVE A COPY OF IT. IS THIS SOMETHING YOUR
19 CLIENT GENERATED? MR. ADAIR: -- THIS IS ACTUALLY -- THE
20 COURT: OH, ALL RIGHT. THEN LET ME SEE IT. -- ENTITLED "EVIDENCE
21 LIST" AND ITEMIZED CERTAIN ITEMS -- AND THIS DOCUMENT
22 WILL SIMPLY BE TREATED AS AN ATTACHMENT TO MR. ADAIR'S
23 MOTION TO SUPPRESS EVIDENCE AS PREVIOUSLY FILED.

24 SEE EXHIBIT "E", PAGE 11 - RTE EXCERPT 58, LINES 25-28. ALSO SEE EXHIBIT
25 "E", PAGE 59, LINES 1-7. MR. ADAIR: YOUR HONOR, MAYBE I MISSPOKE. WHAT
26 I SAID WAS CONFUSING. I HAD HIM UNDER SUBPOENA. THE PROSECUTION
27 DID NOT. THE COURT: I UNDERSTOOD MISS HANNAH TO SAY SHE HAD HAVE HIM
28 (MR. Mc KELVEY) UNDER SUBPOENA MS. HANNAH, NOT FOR THE MOTION, YOUR HONOR

1 THE COURT: NO, I UNDERSTAND MS. HANNAH: FOR TRIAL.
2 THE COURT: ~~THE~~ MEANT FOR TRIAL ON MONDAY, THE COURT: ON MONDAY.
3 MR. ADAIR: I'M SORRY, SEE EXHIBIT E, PAGE 3, RTE EXCERPT 25, LINES,
4 22-25 - MY ADAIR: MY CLIENT ALSO INFORMED ME HE WOULD LIKE A MARS DEN,
5 THE COURT: NO. WE'RE NOT GOING TO TAKE UP A MARS DEN MOTION BECAUSE
6 ^{"STATEMENT OF FACT"} CLEARLY THE COURT ABUSED IT'S DISCRETION IN FAILING TO INQUIRE INTO
7 DEFENDANT'S DISSATISFACTION WITH HIS UNPREPARED, ASLEEP, INEFFECTIVE
8 COUNSEL THIS ERROR WAS PREJUDICIAL, AS COUNSEL D, DNT HAVE
9 ALL DISCOVERY SOME 6 MONTH'S AFTER SERVICE OF DEFENSE MOTION
10 FOR DISCOVERY. SEE EXHIBIT B, PAGE 20, RTE EXCERPT 135 - DATED 7-29-05,
11 LINES 5-11, 13-27 ALSO SEE EXHIBIT B, PAGE 21, RTE EXCERPT 1236, LINES
12 2-20, THE COURT: ALL RIGHT MR. BURTON, WHAT IS THE BASIS OF
13 THE MARS DEN MOTION? THE DEFENDANT: YES, IT'S INEFFECTIVE
14 ASSISTANCE OF COUNSEL. IT ~~DEPRIVED~~ ^{DEPRIVED} MY SIXTH
15 AMENDMENT RIGHT TO AN EFFECTIVE DEFENSE BY NOT PROVIDING THE COURT
16 WITH PERTINENT INFORMATION THAT HE HAD KNOWN ABOUT THAT HE
17 DID NOT PRESENT TO THE COURT. -- WITNESSES, -- ALSO HE FAILED TO
18 FILE THE APPROPRIATE MOTIONS THAT NEEDED TO BE FILED. HERE IS
19 A COPY FROM MR. PLUMMER -- A MOTION WHEREAS MY DUE PROCESS
20 WAS VIOLATED BY PROSECUTION'S FAILURE WITHIN A TIMELY MANNER
21 TO PROVIDE DEFENDANT WITH DISCOVERY, HE FAILED TO FILE THE
22 APPROPRIATE MOTIONS TO DISMISS DUE TO DUE PROCESS
23 VIOLATION -- THIS IS A LETTER THAT MR. PLUMMER HAD SENT TO
24 MS. HANNAH REQUESTING DISCOVERY, AND ANOTHER LETTER WHERE
25 DISCOVERY -- THE COURT WAS INFORMED THAT THE PROSECUTION
26 HAD ALREADY RECEIVED THE MOTION REQUESTING, UNDER BRADY
27 DISCOVERY, PROSECUTION DID NOT RESPOND -- AND I WOULD LIKE
28 THE TRIER OF FACT TO RECONSIDER -- TO RE-RULE ON MY MOTIONS

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THE COURT: WELL ACTUALLY, MR. BURTON, LET ME STOP YOU
 RIGHT THERE. DOES YOUR ENVELOPE PERTAIN TO YOUR EARLIER
 MOTIONS? THE DEFENDANT: YES, IT DOES, MA'AM. THE COURT:
 ALL RIGHT. THE PURPOSE OF A MARSDEN MOTION, AS WE PROCEED
 THROUGHOUT THE TRIAL, IS TO RAISE ANY NEW POINTS, AS I TOLD
 YOU WHEN YOU RAISED YOUR MARSDEN MOTION, I BELIEVE, ON
 THE FIRST DAY OF TRIAL, YOU HAD RAISED ABOUT TEN POINTS. NINE
 OF THEM - RAISED PRIOR TO THE FIRST DAY OF TRIAL. ONE OF THOSE
 HAD TO DO WITH DISCOVERY ISSUES, I FIND AT THIS POINT
 RAISING NEW DISCOVERY ISSUES OR ANYTHING RELATING
 TO MOTIONS THAT YOU PREVIOUSLY HAVE RAISED REALLY DOESN'T
 PERTAIN TO A BASIS FOR RELIEVING YOUR COUNSEL AT THIS STAGE.
~~AND SO IT WOULD BE UNTIMELY AT THIS POINT~~ -- AND IT'S
 DENIED. SEE EXHIBIT "A", PAGE 36, R.T. EXCERPT 200 (16 MARCH 05) LINES
 11-14, 17, 18-22. THE COURT -- MOTION TO COMPEL DISCOVERY. IS THERE
 STILL ANY LURKING DISCOVERY ISSUES? MR. ADAIR: FIRST OFF --
 AND IT CAN'T BE RESOLVED. -- FIRST OFF, I'VE SENT A LETTER TO
 HER REQUESTING CERTAIN ITEMS. MR. PLUMMER DID THE SAME, MR.
 PLUMMER FILED A MOTION THAT WAS SERVED ON HER, -- DISCOVERY
 ISSUES WITH THE PROSECUTOR. SEE EXHIBIT B, PAGE 27, R.T. EXCERPT
 1237, LINES 13, 14, 16-24. THE DEFENDANT: MAY I MAKE ONE OTHER
 MOTION? THE COURT -- ON WHAT GROUNDS? THE DEFENDANT: A MOTION
 FOR A RETRIAL. THE COURT: OKAY. THAT WOULD BE A SEPARATE MOTION,
 YOU'RE CERTAINLY ENTITLED TO CONSULT WITH YOUR ATTORNEY TO DECIDE
 IF YOU WANT TO FILE SUCH A MOTION. THE DEFENDANT: I'M SORRY.
 A MOTION FOR APPEAL AND A MOTION FOR A RETRIAL. THE COURT: YOU
 CAN CERTAINLY RAISE EITHER OF THOSE MOTIONS AT A FUTURE DATE,
 BUT TODAY WOULD NOT BE THE DAY, SEE PROSECUTION'S REBUTTAL ON

1. EXHIBIT "B" PAGE 23, RTEXCERPT 329, LINES 4-10, 12, 20-23, AND 27.
2. MR. ADAIR: (AT TRIAL ON OR ABOUT 19 JULY 05) WELL, WE'VE REQUESTED
3. PHOTOGRAPHS-- I THINK IT STARTED WITH-- WITH THE PRIOR ATTORNEY
4. ON THE CASE APPROXIMATELY A YEAR AGO REQUESTING PHOTOGRAPHS,
5. AND THEY-- I'VE RENEWED-- THAT WAS IN THE FORM OF, I THINK, A
6. LETTER AND AN ACTUAL FILED MOTION THAT WAS NEVER HEARD, A
7. "DISCOVERY MOTION, THAT WAS LAST YEAR, I FOLLOWED UP WITH
8. A LETTER, I FOLLOWED UP WITH A LETTER REQUESTING PHOTOGRAPHS,
9. THE COURT: MR. TROCHA, DO YOU HAVE ANYTHING TO SAY IN "RESPONSE"?
10. MR. TROCHA: I DON'T KNOW THE HISTORY OF THE PHOTOGRAPHS OR
11. ANYTHING, THE COURT: OKAY. SEE EXAMPE OF COURTS BIAS TOWARDS THE
12. DEFENSE TRUTH AND FACT FINDING, THE COURT SHOWING FAVOR OF PROSECUTION,
13. SEE EXHIBIT B, PAGE 58, LINES 12-22. MR. TROCHA: YOUR HONOR, THE ISSUE
14. I HAVE THOUGH IS THAT THE DEFENSE IS THEN GOING TO TURN AND ARGUE
15. THESE THREATS HAPPENED BECAUSE THE DEFENDANT TOLD HIS MOM
16. ABOUT IT. THE COURT: WELL, NO THEY'RE NOT, BECAUSE I'M GOING TO
17. INSTRUCT THE JURY THAT IT'S NOT BEING ADMITTED FOR IT'S TRUTH.
18. AND I'LL INSTRUCT THEM ON THAT AT THE TIME THE TESTIMONY IS
19. PRESENTED AND I'LL INSTRUCT THEM AGAIN AT THE CONCLUDING
20. INSTRUCTION, AND IF THAT ARGUMENT'S MADE DURING ARGUMENT,
21. YOU CAN OBJECT AND I'LL SUSTAIN IT. SEE EXHIBIT B, PAGE 58, RTEXCERPT
22. ~~SEE EXHIBIT B~~ 911, LINES 23, 25-28 MR. TROCHA:-- I MEAN,-- AND IT'S
23. ESSENTIALLY THE DEFENDANT'S TESTIMONY THROUGH HIS MOTHER, WHICH
24. THERE'S NO WAY I CAN EFFECTIVELY CROSS-EXAMINE HER ON THAT
25. BECAUSE-- "WELL, THAT'S WHAT ERIC TOLD ME," SEE EXHIBIT "B" PAGE
26. 32, RT. 176, LINES 2-7, 9-19. MS. HANNAH THERE WERE NO PHOTOGRAPHS,
27. THE COURT: AND I TAKE IT THE PEOPLE DON'T (APPROX 3-24-05) HAVE ANY?
28. MS. HANNAH: WE DO NOT. THE COURT: ALL RIGHT WELL, DISCOVERY AS

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1 TO THE PEOPLE, IF THEY DON'T HAVE IT, THEY CAN'T PRODUCE IT, --
2 PHOTOGRAPHS, -- AT LEAST INFORMALLY TO THE PROSECUTOR, THERE ARE
3 NONE. SO YOU CAN'T ORDER PRODUCTION OF SOMETHING THAT DOESN'T
4 EXIST. ANYTHING ELSE BEFORE WE DEAL WITH THE MARSDEN MOTION, ^{INTRODUCED}
5 MR. ADAIR, THERE ENJOY ~~END~~ SEE EXHIBIT B, PAGE 2, RT. EXCERPT 719, LINES 1-2,
6 14, -23, THE COURT: ALL RIGHT, LETS GO BACK IN THE HALLWAY FOR
7 A MOMENT. MR. TROCHA: WE HAVE EVIDENCE THAT THE DEFENSE HAS BROUGHT
8 OUT, AND IS GOING TO BRING OUT FURTHER IN THEIR CASE IN CHIEF, THAT MR.
9 THOMAS IS, IN FACT THE AGGRESSOR. NOW SEE EXHIBIT B, PAGE 1, RT.
10 EXCERPT 177, LINES 1-7, THE COURT: ALL RIGHT. ANY RESPONSE BY THE
11 PEOPLE? MS. HANNAH: -- CIRCUMSTANCES AND THE RESULT OF THE
12 INCIDENT THAT OCCURED ON MARCH 19TH OF LAST YEAR. WHETHER
13 THE ISSUE -- THE WHOLE QUESTION OF THE TRIAL IS
14 WHETHER MR. BURTON IS THE PERSON THAT COMMITTED THE
15 (ALLEGED) CRIME, NOT WHETHER OR NOT MR. THOMAS IS, IN FACT
16 A (ALLEGED) VICTIM OF A CRIME. STATEMENT OF RELEVANT
17 FACTUAL BACKGROUND. DEFENDANT SHOWN BY THE EXCEPTS IN THE
18 PREVIOUS PAGES WAS LITERATE, UNDERSTANDING, COGNIZANT
19 THAT "SO MUCH IS AT STAKE", EXERCISING HIS INFORMED FREE
20 WILL TO SELF REPRESENTATION THAT HE CLEARLY BY THE
21 EXCEPTS DIDN'T ABANDON, THE COURT ABUSED IT'S DISCRETION
22 IN FAILING TO MAKE THE PROPER WINDHAM INQUIRY, AND
23 BY THE REASONING IN FARETTA, THE COURT FORCED A COUNSEL
24 ON AN UNWILLING DEFENDANT PREJUDICIALLY AND ERRONEOUSLY,
25 THE TRIAL COURT DENIED PETITIONERS FUNDAMENTAL RIGHT TO
26 A FAIR TRIAL AND HIS RIGHT TO MAKE HIS DEFENSE PERSONALLY
27 AS GUARANTEED BY THE U.S. CONSTITUTION SPECIFICALLY THE
28 6TH AND 14TH ONE PROCESS AND EQUAL PROTECTION CLAUSES, AND REVERSAL IS WA-
29 RANTED PER REASONING OF FARETTA V. CALIFORNIA SUPRA.